

No. 3845

United States
Circuit Court of Appeals

For the Ninth Circuit. 5

Transcript of Record.

(IN TWO VOLUMES.)

JAMES C. DAVIS, as Director General of Railroads, Operating the Chicago, Milwaukee & St. Paul Railway and Agent Appointed Under the Transportation Acts of 1920,
Plaintiff in Error,

vs.

AMERICAN SILK SPINNING COMPANY, a Corporation,
Defendant in Error.

VOLUME I.

(Pages 1 to 384, Inclusive.)

Upon Writ of Error to the United States District Court of the Western District of Washington, Southern Division.

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

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Attorneys for Defendant in Error.

J. M. RICHARDSON LYETH, Esquire, New York City,

Attorney for Defendant in Error. [1*]

In the Southern District of the United States for
the Western District of Washington, Southern
Division.

2905.

AMERICAN SILK SPINNING COMPANY,
Plaintiff,

vs.

DIRECTOR GENERAL OF RAILROADS (Oper-
ating Chicago, Milwaukee & St. Paul Rail-
way),

Defendant.

*Page-number appearing at foot of page of original certified Transcript of Record.

Complaint.

Comes now the plaintiff herein and complains and alleges as follows:

FIRST: That the plaintiff at all the times herein mentioned was and still is a corporation organized and existing under the Laws of the State of Rhode Island, with its principal place of business at the City of Providence, in said State, and is a citizen of said State.

SECOND: That the defendant at all the times herein mentioned was and still is the Director General of Railroads duly appointed, and acting under and by virtue of an Act of Congress, and at all the times herein mentioned was and still is operating as a common carrier of freight and passengers the railroad lines of the Chicago, Milwaukee & St. Paul Railway Company between the Cities of Seattle and Tacoma, Washington, and the City of Chicago, Illinois. That the Chicago, Milwaukee & St. Paul Railway Company at the times herein mentioned was and still is a corporation organized and existing under the Laws of the State of Wisconsin and is a citizen of said State. [2]

THIRD: That during the month of June, 1918 the plaintiff caused to be shipped, freight prepaid, from Canton, China, 1,000 bales of waste silk of which 700 bales were consigned to the order of Messrs. Heidelbach, Ickelheimer & Co., New York, and 300 bales to Goldman, Sachs & Co., New York, all destined to plaintiff American Silk Spinning Company at Providence, Rhode Island, and upon

delivery to and receipt of said silk at Canton, China, by Osaka Shosen Kaisha, Ltd., in good order and condition, said Osaka Shosen Kaisha, Ltd., on behalf of itself, separately and as a duly authorized agent of the defendant operating lines of railroad as aforesaid, did jointly execute and deliver four certain through Trans Pacific and Overland Bills of Lading covering the transportation of said bales of silk from Canton, China, to Providence, Rhode Island, and consigned and destined as aforesaid. That by the terms of said bills of lading said silk was to be carried by said Osaka Shosen Kaisha, Ltd., from Canton, China, to Seattle or Tacoma, Washington, on its steamship "Canada Maru" and there delivered to the defendant to be carried by defendant over the lines of the Chicago, Milwaukee & St. Paul Railway Company, and other lines of railroad connecting therewith to the destination named in said bills of lading, to wit, Providence, Rhode Island, and there delivered to the plaintiff. That said consignees named in said bills of lading did for a valuable consideration and prior to the arrival of said silk at Tacoma, Washington, endorse said bills of lading to the plaintiff, and the plaintiff thereupon became the owner of said bills of lading and the said silk and became entitled to the delivery of said silk as provided in said bills of lading. That said bills of lading were numbered, dated and covered the [3] bales as follows:

B/L No. 8 dated June 21, 1918, 300 bales

B/L No. 9 dated June 21, 1918, 200 bales

B/L No. 10 dated June 24, 1918, 200 bales

B/L No. 11 dated June 24, 1918, 300 bales

FOURTH: That during the time the said silk was in course of transportation on said S/S. "Canada Maru" under the said bills of lading 867 bales of said silk became wet from contact with salt water. That upon arrival of said S/S. "Canada Maru" at Tacoma, Washington, during the month of August, 1918, the said 1,000 bales of silk were discharged from the S/S. "Canada Maru" and delivered into the possession of defendant for transportation to destination as aforesaid under and in pursuance of the terms of the said bills of lading. That defendant accepted all of said silk for transportation and in consideration of the freight prepaid to his agent as aforesaid, and of further freight and charges to be paid by plaintiff, the defendant agreed to transport the wet silk to destination by silk or passenger train service in refrigerator-cars as aforesaid. That 133 bales of said silk were dry and were in due course transported by defendant to their destination, but that the defendant after accepting the said 867 bales of wet silk for transportation failed and refused to transport said bales of wet silk to their destination but demanded that said bales be dried and reconditioned before defendant transported same to destination, all contrary to the terms and requirements of his contract of carriage aforesaid.

FIFTH: That plaintiff in order to have said wet silk transported to destination and without waiving or relinquishing any of its rights in the prem-

ises did cause said wet silk to be treated and reconditioned as required and demanded by the defendant and thereby incurred an expense of \$5,000. That after said silk had been dried and reconditioned as aforesaid the defendant transported the same to destination and there delivered the same to the plaintiff. [4]

SIXTH: That as the natural and proximate result of the drying and reconditioning of said wet silk the colors of said silk became fixed and permanent and the silk was otherwise damaged and the delivery of the same at destination was greatly delayed thereby causing great loss and damage to plaintiff. That by reason of the wrongful failure and refusal of the defendant to transport said silk in the condition in which defendant accepted the same for transportation and agreed to transport the same as aforesaid, the plaintiff has been damaged in the sum of \$100,622.75 in addition to the sum of \$5,000 expended by the plaintiff in drying and reconditioning the said silk making a total damage to the plaintiff of \$105,622.90. That the defendant has wholly failed and refused to pay to the plaintiff, any part of said sum although demand therefor has been made.

WHEREFORE plaintiff prays for judgment against the defendant in the sum of \$105,622.90, together with interest thereon at the legal rate from the 15th day of August, 1918, together with its costs and disbursements herein, and for such other

and further relief as it may be entitled to receive in the premises.

BALLINGER, BATTLE, HULBERT &
SHORTS,

Attorneys for Plaintiff. [5]

State of Washington,
County of King,—ss.

Bruce C. Shorts, being first duly sworn on oath deposes and says: That he is one of the attorneys for the American Silk Spinning Company, a corporation, and that he makes this affidavit and verification for and on behalf of said plaintiff corporation, for the reason that the same is a foreign corporation, and that affiant is familiar with the facts in the case. Affiant states that he has read the foregoing complaint, knows the contents thereof and upon oath swears that the same is true and correct.

BRUCE C. SHORTS,

Subscribed and sworn to before me this 25th day of February, 1920.

R. G. DENNEY,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Feb. 26, 1920. F. M. Harshberger, Clerk. By Ed. M. Lakin, Deputy. [6]

In the United States District Court for the Western
District of Washington, Southern Division.

No. 2905.

AMERICAN SILK SPINNING COMPANY,
Plaintiff,

vs.

DIRECTOR GENERAL OF RAILROADS (Oper-
ating Chicago, Milwaukee & St. Paul Rail-
way),

Defendant.

Plea in Abatement and Answer.

COMES NOW the defendant, and, not waiving any right to controvert the sufficiency or truth of the allegations contained in the plaintiff's complaint when an issue shall be tendered by a party having a valid and subsisting interest in the subject matter of this act, defends on the ground that the above-named plaintiff is not the real party in interest and that it has no right to maintain this action.

As grounds for abatement of this action, the defendant alleges:

1. That the damage to the merchandise constituting the plaintiff's alleged cause of action herein occurred while said merchandise was in transit from Hong Kong, China, by way of Tacoma or Seattle to Providence, Rhode Island, and was insured against loss or damage while so in transit, by

the Atlantic Insurance Company of New York in the State of New York.

2. That the plaintiff has received from said Insurance corporation full compensation for all damage to said merchandise which occurred while the same was in transit as aforesaid. [7]

3. That the bill of lading contracts, and each of them, referred to in plaintiff's complaint, under which the said merchandise moved in transit, as aforesaid, contain a stipulation applicable to the part of the transportation service undertaken and performed by this defendant, which is as follows:

“Any carrier or party liable on account of loss or damage to any of said property shall, by right of subrogation, have the full benefit of any insurance that may have been effected on or on account of said property.”

4. That the plaintiff, as a mere volunteer and in collusion with said Atlantic Insurance Company of New York, in the State of New York, commenced and now prosecutes this action for the sole benefit of said insurer, and if a judgment for any amount of money should be rendered herein against this defendant, the same would inure to said insurer, the Atlantic Insurance Company.

WHEREFORE, this defendant prays to be hence dismissed and for judgment against said plaintiff for costs.

Without waiving his plea in abatement and always insisting upon the same, the defendant, by way of answer to the complaint of the plaintiff herein, alleges as follows:

I.

1. Answering the first and second paragraphs of said complaint, the defendant admits the truth of the allegations therein contained.

2. Answering the third paragraph of said complaint, the defendant admits each and every allegation therein contained, except that he denies that he has any knowledge or information sufficient to form a belief with respect to the assignments [8] of the bills of lading and transfer of ownership therein alleged, and demands that said allegations be proved.

3. Answering the fourth paragraph of said complaint, the defendant denies each and every allegation and the whole thereof, except the following allegations therein, which are admitted to be true:

“That during the time the said silk was in course of transportation on said steamship ‘Canada Maru,’ under the said bills of lading, 867 bales of said silk became wet from contact with salt water. That upon arrival of said steamship ‘Canada Maru’ at Tacoma, Washington, during the month of August, 1918, the said 1000 bales of silk were discharged from the steamship ‘Canada Maru.’ * * * That 133 bales of said silk were dry and were in due course transported by the defendant to their destination.”

And the defendant admits refusal on his part to transport the wet bales of waste silk while the same were in the condition existing at the time

when the same were at first offered for transportation.

4. Referring to the fifth paragraph of said complaint, defendant denies that he has any knowledge or information sufficient to form a belief, with reference to the amount of expense, if any, incurred by the reconditioning of said wet bales of waste silk. The defendant admits that, in order to have said wet silk transported, the same was dried, and admits that after having been dried, the said silk was transported by the defendant to destination and there delivered the same to the plaintiff. The defendant denies each and every other allegation and insinuation contained in said paragraph.

5. Answering the sixth paragraph of said complaint, the defendant admits that he has refused to pay any of the alleged damages, and he denies each and every other allegation and insinuation contained in said paragraph. [9]

II.

Further answering said complaint and for a first affirmative defense, the defendant alleges as follows:

1. That the bill of lading contracts alleged and referred to in said complaint each contain a condition applicable to the part of the transportation service from Seattle or Tacoma to destination of the following tenor:

“Except in the case of negligence of the carriers or party in possession (and the burden to prove freedom from such negligence shall be

on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage or delay occurring while the property described herein is stopped and held in transit upon request of the shipper, owner or party entitled to make such request, or resulting from a defect or vice in the property, or from riots or strikes.”

2. That while the 1000 bales of silk aforesaid were in transit on board of the steamship “Canada Maru,” the said vessel, by a marine disaster, was seriously injured so that she took into her hold and cargo space in which 867 of said bales of waste silk were stored, great quantities of sea water, whereby all of said 867 bales were submerged, and, when discharged from said vessel at Tacoma, were completely saturated with salt water, which caused the generation of heat and ammoniacal fumes within said bales and the deterioration and decay of said waste silk.

3. That when said 867 bales of waste silk were tendered to the defendant for transportation, the said bales were wet, hot, rapidly deteriorating by reason of the salt water germs which accumulated therein, and dangerous to handle because of the fumes emanating therefrom, and, because of said conditions and the probability of spontaneous combustion, the said bales were unfit for transportation for the long distance required for the delivery at Providence in the State of Rhode Island; and, solely for that [10] reason, the defendant refused to accept said 867 bales for transportation

under the said bills of lading and the tariffs relating thereto while the said bales were in such unfit condition.

4. That the only delay in performing the transportation service, pursuant to the contracts contained in said bills of lading, occurring subsequent to the unloading of said waste silk from the steamship "Canada Maru," was due to the necessary and unavoidable stoppage of said property in transit because of the aforesaid defect and vice in said property; and whatever damage to said property occurred while the same was in transit, the same was caused by the marine disaster aforesaid and not by any act or default of the defendant.

II.

Further answering said complaint and for a second affirmative defence thereto, the defendant alleges as follows:

1. That each of the bill of lading contracts alleged in said complaint contain a condition applicable to the part of the transportation service of said waste silk from Seattle or Tacoma to destination, which condition is of the following tenor:

"Any carrier or party liable on account of loss or damage to any of said property, shall, by right of subrogation, have the full benefit of any insurance that may have been effected on or on account of said property."

2. That the Atlantic Mutual Insurance Company of New York in the State of New York, a corporation, by a policy, or by several policies, issued by it, insured all of the 867 bales of waste silk for

which damages are sued for herein, for the full value [11] thereof, in favor of the consignee or consignees or owner or owners thereof, against loss of, or damage to, said property occurring during the time of transportation thereof pursuant to said bills of lading. Said policy or policies are not, and have not been, in defendant's possession, and defendant is unable to describe the same or to state the terms or provisions thereof with greater particularity, but the plaintiff is fully informed with respect to said insurance.

3. That the plaintiff has received from said insurer the amount of money payable under said policy or policies and thereby has been fully compensated for all damages to said 867 bales; and, by receiving said money, the plaintiff has deprived the defendant of all right by subrogation to be reimbursed for payment of the damages sued for herein and enforceable in any action or proceeding against said insurer, which right would inure to the defendant, upon such payment of damages, by force and virtue of the condition aforesaid in said bill of lading contracts, if the plaintiff had not received the compensation aforesaid.

III.

Further answering said complaint and for a third affirmative defence thereto, the defendant alleges:

That when the said wet bales of waste silk were first offered to the defendant, to be transported under the bills of lading referred to in the complaint, the defendant examined and inspected the said bales in the customary way that freight is

usually examined by well regulated railroads when tendered for carriage, and, from such examination, it reasonably appeared to the defendant that there was great danger and risk of injury to persons [12] and property, and great likelihood of further damage to said silk, if the said silk were transported to destination in the manner and with the facilities demanded by the said bills of lading and the tariffs in force relating to the transportation of silk.

That immediately after said examination, the defendant orally notified the plaintiff that he had made such examination and of the dangerous and unfit condition in which the said wet silk then appeared to the defendant to be, and that the defendant would not accept the said wet silk for shipment because of the then unfit and dangerous condition of the silk as disclosed by defendant's said examination; that, in response to said notice and refusal to accept, the plaintiff, after personal examination of the wet bales of silk, proposed to the defendant that a further examination and inspection of the wet silk should be made by a competent cargo surveyor and inspector in the manner in which such surveyors or inspectors usually examine cargoes for shipment, in order to determine whether or not the said wet silk was unfit for transportation or subject to further damage or deterioration, if forwarded to destination in the manner and with the facilities demanded by the terms of the said bills of lading and the tariffs governing the shipment of silk, and that, if said surveyor or in-

pector, after such examination, was of the opinion that there was danger or risk in transporting the wet silk in the condition in which it was first offered for shipment, by the means and facilities demanded by said bills of lading, the plaintiff would accept his judgment and opinion as final and the defendant would then be relieved from all further obligation to accept and transport the wet silk in that condition in which it was when first offered for shipment.

That, acting upon said proposal, the plaintiff and the defendant selected one J. Ayton, a cargo surveyor, Lloyds' Agents, of Seattle, to make the examination and inspection aforesaid, and [13] said surveyor at once proceeded to make said examination, and upon completing the same, reported to the plaintiff and the defendant in writing his conclusions as follows:

“On examination of the same (wet bales of silk) I found the bales in a very wet, soaky condition, quite warm and heating, so much so some of them were quite hot. These were piled three high outside in the open air, so if the stuff will heat from being piled in this way, what would it do if it was loaded and piled in a closed car; therefore, I am of the opinion there is a great risk in shipping this in the condition it is in.”

That, acting upon the said report, the plaintiff took immediate possession of all the wet bales of silk and withdrew them from the place where they were offered for shipment, had them transported

to Seattle, where the plaintiff, of its own accord and without any act of the defendant, had the said silk dried; and the plaintiff, at the time it had the said silk dried, knew, or should have known, that, by such process and treatment, the very damage complained of would occur, and, having such knowledge or the means of knowing the fact, the plaintiff became a party to said wrongful act of which complaint is made and cannot profit thereby; and the defendant, acting upon the said report and upon the conduct of the plaintiff in taking possession of said wet bales of silk and withdrawing them as aforesaid, made no further attempt to examine the same or to determine their fitness for shipment, or to learn what was being done with the same by the plaintiff and gave said shipment no further consideration; and, by plaintiff's said acts, the defendant was misled and was deprived of the right and opportunity to avoid the very claims and charges now asserted against the defendant in the complaint.

That, by reason of the foregoing, the plaintiff is now denied the right to assert or to prove any of the acts charged in the complaint against the defendant upon which the right to recover [14] damages is founded.

WHEREFORE, and by reason of all the foregoing affirmative defenses and other matters set forth herein, the defendant prays that said action be dismissed and that the defendant have judgment

against the plaintiff for all costs and disbursements incurred herein.

GEO. W. KORTE,
H. S. GRIGGS,
Attorneys for Defendant,
608 White Building,
Seattle, Wash.

State of Washington,
County of King,—ss.

Geo. W. Korte, being first duly sworn, on oath deposes and says:

That he is the attorney for the defendant and makes this verification because the said defendant does not reside, and is not now in the State of Washington; that affiant has read the foregoing plea in abatement and answer and that the statements and allegations therein contained are true as he verily believes.

GEO. W. KORTE.

Subscribed and sworn to before me, this 8th day of June, 1920.

[Seal of Notary] W. C. MUMFORD,
Notary Public in and for the State of Washington,
Residing at Seattle Therein.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. June 12, 1920. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [15]

In the Southern District of the United States for
the Western District of Washington, Southern
Division.

No. 2905.

AMERICAN SILK SPINNING COMPANY,
Plaintiff,

vs.

DIRECTOR GENERAL OF RAILROADS, (Op-
erating Chicago, Milwaukee & St. Paul
Railway),

Defendant.

Reply.

Comes now the plaintiff and for its reply to de-
fendant's plea in abatement and answer herein
alleges as follows:

I.

It denies that the merchandise referred to in
paragraph I of the plea in abatement was insured
by the Atlantic Insurance Company of New York,
and alleges that said merchandise was insured by
the Atlantic Mutual Insurance Company.

II.

It denies each and every allegation contained in
the second paragraph of said plea in abatement.

III.

Replying to the allegations in paragraph III
of said plea in abatement, plaintiff admits that the
bills of lading contain the clause therein quoted,
and denies each and every other allegation in said
paragraph set forth.

IV.

Replying to paragraph IV of said plea in abatement, plaintiff denies each and every allegation therein set forth. [16]

For reply to the first affirmative defense set forth in said plea in abatement and answer, plaintiff admits, denies and alleges as follows:

I.

Plaintiff admits that the bills of lading contain the clause therein quoted and denies each and every other allegation in said first paragraph set forth.

II.

Replying to the allegations of paragraph II of said first affirmative defense, plaintiff admits said allegations except that it denies on information and belief that the wetting of the 867 bales of silk caused generation of heat and ammoniacal fumes within said bales and the deterioration and decay of said waste silk.

III.

Replying to paragraph IV of said first affirmative defense, plaintiff denies each and every allegation therein set forth, except that it admits that when said 867 bales of silk were tendered to and accepted by the defendant for transportation the said bales were wet, and except further that it denies any knowledge or information sufficient to form a belief as to the reasons for defendant's refusal to transport said silk.

IV.

Replying to paragraph IV of said first affirmative

defense, plaintiff denies each and every allegation therein set forth.

And for reply to the allegations set forth in defendant's second affirmative defense, plaintiff admits, denies and alleges as follows: [17]

I.

Replying to paragraph one of said second affirmative defense, plaintiff admits that the bills of lading contain the clause therein quoted and denies each and every other allegation therein set forth.

II.

Replying to the allegations of paragraph II of said second affirmative defense, plaintiff admits that the 867 bales of waste silk were insured by the Atlantic Mutual Insurance Company of New York in favor of the consignee or consignees or owner or owners thereof against loss of or damage to said property occurring during the time of transportation thereof under said bills of lading, and plaintiff denies each and every other allegation in said paragraph II set forth.

III.

Replying to paragraph III of said second affirmative defense, plaintiff denies each and every allegation therein contained, and alleges that plaintiff has received a sum of money from said insurer solely as a loan and not in payment of any claim or claims against said insurer arising out of said insurance.

For reply to the allegations set forth in the third affirmative defense of defendant's answer, plaintiff admits, denies and alleges as follows:

I.

Plaintiff denies it has any knowledge or information sufficient to form a belief as to the matters alleged in the first paragraph of said third affirmative defense, therefore it denies the same. [18]

II.

And for reply to all other allegations set forth in said third affirmative defense, plaintiff denies the same on information and belief, except plaintiff admits that the Cargo Surveyor from Lloyds' Agents of Seattle examined the wet bales of silk after same had been accepted for transportation by the defendant and after defendant had refused to transport the same according to its agreement as alleged in the fourth paragraph of plaintiff's complaint, and further plaintiff admits that it caused said wet silk to be treated and reconditioned, but only for the reasons and causes and under the circumstances alleged in paragraphs IV and V of its complaint herein.

WHEREFORE, having fully replied to defendant's plea in abatement and answer herein, plaintiff prays for judgment against the defendant as demanded in plaintiff's complaint.

BALLINGER, BATTLE, HULBERT &
SHORTS,

Attorneys for Plaintiff.

State of Washington,
County of King,—ss.

Bruce C. Shorts, being first duly sworn, on oath deposes and says: That he is one of the attorneys for the American Silk Spinning Company, a cor-

poration, and that he makes this affidavit and verification for and on behalf of said plaintiff corporation, for the reason that the same is a foreign corporation, and that affiant is familiar with the facts in the case. Affiant states that he has read the foregoing reply, knows the contents thereof and upon oath swears that the same is true and correct.

BRUCE C. SHORTS.

Subscribed and sworn to before me this 2d day of August, 1920.

R. G. DENNEY,

Notary Public in and for the State of Washington,
Residing at Seattle.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Aug. 30, 1920. F. M. Harshtger, Clerk. By Ed M. Lakin, Deputy. [19]

United States District Court, Western District of
Washington, Southern Division.

No. 2905.

AMERICAN SILK SPINNING COMPANY,
Plaintiff,

vs.

DIRECTOR GENERAL OF RAILROADS (Op-
erating Chicago, Milwaukee & St. Paul
Railway),

Defendant.

Stipulation Re Fixing Date and Place of Trial.

It is hereby stipulated between the attorneys of record for plaintiff and defendant, undersigned, that for the greater convenience of counsel and witnesses and for the purpose of saving witnesses' time, expenses and costs, the above-entitled cause may be tried at the United States District Courthouse in Seattle, Washington, beginning October 25th, 1921.

BALLINGER, BATTLE, HULBERT &
SHORTS,

Attorneys for Plaintiff.

GEO. W. KORTE,

Attorneys for Defendant.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Oct. 13, 1921. F. M. Harshberger, Clerk. By Ed. M. Lakin, Deputy. [20]

United States District Court, Western District of
Washington, Southern Division.

No. 2905.

AMERICAN SILK SPINNING COMPANY,
Plaintiff,

vs.

DIRECTOR GENERAL OF RAILROADS (Op-
erating Chicago, Milwaukee & St. Paul
Railway),

Defendant.

Stipulation Waiving Jury.

We, the attorneys of record for the respective parties, hereby waive the trial to the jury of this cause, and agree to submit the same to the Court without the intervention of a jury.

Dated October 7, 1921.

BALLINGER, BATTLE, HULBERT and
SHORTS,

Attorneys for Plaintiff.

GEO. W. KORTE,

H. S. GRIGGS,

Attorneys for Defendant.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Oct. 13, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [21]

**JOURNAL ENTRY OF FIRST DAY'S RECORD
OF TRIAL.**

At a session of the United States *District for the* Western District of Washington, held, by stipulation of counsel in this certain cause, at Seattle, in the Northern Division of said District, the Honorable ROBERT S. BEAN, U. S. District Judge presiding, among other proceedings had were the following, truly taken and correctly copied from the journal of said U. S. District Court at Tacoma, in the Southern Division, as follows:

No. 2905.

AMERICAN SILK SPINNING COMPANY

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-
WAY CO.

Record of Trial.

This cause comes on this 26th day of October, 1921, for trial in Seattle, Bruce M. Shorts and J. M. Richardson Lyeth for plaintiff, and the defendant company represented by Geo. W. Korte and C. H. Hanford. Statement of the case is made by counsel for both sides, and the cause proceeds with the introduction of evidence both oral and documentary, the following being called, sworn and testifying on behalf of plaintiff: 1, Frank G. Taylor; Charles H. Weldon. Plaintiff's Exhibits Nos. 1-A, 2-A, 3-A, 4-A, 5-A; 2, 6-A, 7-A, 10, 11, 12, 13, 14, 15, 16, 17, are introduced, whereupon the hour of adjournment being reached, this cause is continued to October 27, 1921. [22]

In the United States District Court for the Western
District of Washington, Southern Division.

AMERICAN SILK SPINNING COMPANY,
Plaintiff,

vs.

DIRECTOR GENERAL OF RAILROADS (Op-
erating Chicago, Milwaukee & St. Paul Rail-
way),

Defendant.

Findings of Fact and Conclusions of Law.

This cause came on regularly for hearing in October, 1921, before the undersigned Judge of the United States District Court, sitting by special assignment, the plaintiff appearing by its attorneys, J. M. Richardson Lyeth, Esq., and Bruce C. Shorts of the firm of Ballinger, Battle, Hulbert & Shorts; and the defendant appearing by its attorneys, George W. Korte, Esq., and C. H. Hanford, Esq., and thereupon by stipulation in writing signed by the parties, jury trial was waived.

And now at this time, the Court having duly considered the pleadings, evidence and arguments of counsel, finds the facts in the case to be as follows:

I.

That the plaintiff at all the times hereinafter mentioned was and still is a corporation organized and existing under the laws of the State of Rhode Island, with its principal place of business in the City of Providence in said State, and is a citizen of said state.

II.

That the defendant at all times herein mentioned was the United States Director General of Railroads [23] duly appointed and acting under and by virtue of an Act of Congress and at all times herein mentioned was operating as a common carrier of freight and passengers the railroad lines of the Chicago, Milwaukee & St. Paul Railway Company between the Cities of Seattle and Tacoma, Washington, and the City of Chicago, Illinois.

That the Chicago, Milwaukee & St. Paul Railway Company at the times herein mentioned was and still is a corporation organized and Existing under the laws of the State of Wisconsin, and is a citizen of said state.

III.

That on June 21st and 24th, 1918, the plaintiff caused to be shipped, freight prepaid, from Canton, China, 1000 bales of waste silk, of which 700 bales were consigned to the order of Messrs. Heidebach, Ickelheimer & Co., of New York, and 300 bales to Goldman, Sachs & Co., New York, all destined to plaintiff, American Silk Spinning Company at Providence, Rhode Island. That 500 bales were of the quality known as "No. 1 Canton Steam Waste Silk" and 500 bales were of the quality known as "No. 2 Canton Steam Waste Silk."

IV.

That the said 1000 bales of waste silk were delivered at Canton, China, to Osaka Shosen Kaisha, Ltd., and upon delivery to and receipt of said bales in good order and condition, said Osak Shosen Kaisha, Ltd., on behalf of itself, separately and as a duly authorized agent of the defendant operating lines of railroad, as aforesaid, did jointly execute and deliver four certain through Trans-Pacific and Overland Bills of Lading [24] covering the transportation of said 1000 bales of waste silk from Canton, China, to Providence, Rhode Island, and consigned and destined as aforesaid.

V.

That by the terms of said bills of lading said

waste silk was to be carried by said Osaka Shosen Kaisha, Ltd., from Canton, China, to Seattle, or Tacoma, Washington, on its steamship "Canada Maru" and there delivered to the defendant to be carried by the defendant over the lines of the Chicago, Milwaukee & St. Paul Railway Company and other lines of railroad connecting therewith to the destination named in said bills of lading, to wit, Providence, Rhode Island, and there delivered to the order of said consignee.

VI.

That said goods were purchased by the plaintiff of the manufacturer in China on four months letters of credit from date of shipment, issued by the consignee banks, and on August 7, 1918, and prior to the arrival of the goods at Tacoma, the consignee banks without receiving immediate payment of the purchase price, endorsed and delivered the bills of lading to the plaintiff, and plaintiff subsequently paid the drafts which had been guaranteed by letters of credit issued by the consignee banks, when the same became due.

VII.

That said bills of lading were numbered, dated and covered the said 1000 bales of waste silk as follows:

B/L No. 8 dated June 21, 1918, 300 bales.

B/L No. 9 dated June 21, 1918, 200 bales.

B/L No. 10 dated June 24, 1918, 200 bales.

B/L No. 11 dated June 24, 1918, 300 bales [25]

That each *each* of said bills of lading contained stipulations of the following tenor: "Any car-

rier or party liable on account of loss of or damages to any part of said property shall have the right of subrogation for the full benefit of any insurance that may have been effected upon or on account of said property.”

“Except in the case of negligence in the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession) the carrier or party in possession shall not be liable for loss, damage or delay occurring while the property described herein is stopped and held in transit upon request of the shipper, owner or party entitled to make such request: or resulting from a defect or vice in the property, or from riots or strikes.”

That at the time the bills of lading were issued freight from the through service was prepaid at the tariff rates as to the railroad service prescribed in the Tariff previously filed with the Interstate Commerce Commissioner and then in effect.

VIII.

That on July 30, 1918, and during the time said 1000 bales of waste silk were in course of transportation on said S. S. “Canada Maru” under the said bills of lading, said vessel stranded and large quantities of salt water entered her holds, and as a result 500 bales of said waste silk known as “Canton Steam Waste Silk No. 1” and 367 bales of said waste silk known as “Canton Steam Waste Silk No. 2” became wet from the contact with the salt water.

[26]

That upon arrival of said S. S. “Canada Maru”

at Tacoma, Washington, the said 1000 bales of waste silk were discharged from said vessel. Such discharge was begun early in the morning of August 12, 1918.

IX.

That the 133 bales of waste silk which had not been wet with salt water were in due course transported by defendant to destination.

That the remaining 867 bales which had been wet with salt water were discharged on the dock, which dock belonged to the Chicago, Milwaukee & St. Paul Railway Company, and was then being maintained and operated by defendant as a part of said railway system.

That after the vessel had commenced discharging the wet silk, Mr. Taylor, the representative of the underwriters and owners thereof, called on Mr. Cheeney, the chief clerk of the freight agent at Tacoma, and who was in charge of the dock and the movement of freight therefrom, and told Mr. Cheeney that he was very anxious to have quick dispatch of the wet silk, and that it was important that it should go forward in its wet condition. Cheeney and Taylor looked at the silk as it was being discharged from the vessel and placed on the dock, and Taylor requested that it be forwarded by silk train service in refrigerator-cars, and Cheeney agreed to so forward it, stating that the cost of such service would be \$7.50 per hundred pounds as against the bill of lading freight of \$1.75 per hundred, and that there would be an additional charge for refrigeration of approximately

\$21.00 per car to pay, all of which Taylor agreed to. On August 14th, Taylor again called on Cheeney to see how the matter was progressing, and [27] he and Cheeney again examined the silk, and Taylor was told by Cheeney that the cars had been ordered and would be brought in shortly, and thereafter the cars were brought in, and approximately one-half of the wet silk bales were loaded on two or more refrigerator-cars for shipment.

X.

That after thus contracting for and accepting all of said 867 bales of wet waste silk for transportation as aforesaid and after loading approximately one-half of said bales in refrigerator-cars as aforesaid, the defendant without the consent of plaintiff and in disregard of plaintiff's protest, failed and refused to transport said bales of wet waste silk, or any part thereof to destination, and thereafter defendant caused the bales loaded in said refrigerator-cars to be unloaded on said dock, all contrary to the terms and requirements of the aforesaid contract of carriage.

XI.

That at the time said 867 wet bales were accepted for shipment as aforesaid and at all times thereafter, the same were properly packed and in condition for safe transportation by defendant from Tacoma to destination by silk or passenger train service in refrigerator-cars, and such transportation was not prohibited by any regulation of the Interstate Commerce Commission.

XII.

That thereafter defendant demanded that said bales be dried and reconditioned before defendant would transport the same to destination, and plaintiff in order to secure transportation [28] of said bales to destination was required to and did cause the same to be dried.

That the reasonable cost and expense of drying said bales was \$5000, which sum plaintiff paid therefor.

That plaintiff in taking possession of said 867 bales of wet waste silk for the purpose of drying it as aforesaid did so without relinquishing any of plaintiff's rights in the premises.

That after said 867 bales had been dried as aforesaid, the defendant transported the same without additional freight or charges to destination, to wit: Providence, Rhode Island, and there delivered the same to plaintiff.

XIII.

That the drying of said 867 bales of wet waste silk was done in a reasonable and proper manner.

That the natural and approximate result of the drying of said bales of waste *wilk* was a weakening of the fiber and a discoloration of said waste silk.

That upon arrival of said 867 bales of waste silk at destination, the reasonable, fair market value thereof was the sum of \$14,815.67, and no more.

XIV.

That had defendant carried out its contract with plaintiff and transported said 867 bales of wet waste silk to destination by silk or passenger train

service in refrigerator-cars, the fair market value of 500 bales of No. 1 waste silk upon delivery at destination would have been \$95,394.25, less 10%, and the fair market value of the 367 [29] bales of No. 2 Waste silk upon delivery at destination would have been \$40,342.27, less 10%, and the total net value of said 867 bales upon delivery at destination would have been \$122,163.32.

XV.

That in addition to the bill of lading freight, the contract between the defendant and plaintiff relating to the transportation of said 867 bales of wet waste silk from Tacoma, Washington, to destination by silk or passenger train service in refrigerator-cars required the plaintiff to pay further freight and charges amounting to \$6,724.75.

XVI.

That as a result of the failure and refusal of the defendant to perform its contract to transport said 867 bales of wet waste silk from Tacoma, Washington, to destination by silk or passenger train service in refrigerator-cars, the plaintiff has been damaged in the sum of \$105,622.90.

XVII.

That all of said 1000 bales of waste silk were insured against damage in transit from Hong Kong to Providence, Rhode Island, by an open policy issued by the Atlantic Mutual Insurance Company, and on February 6, March 7, and March 12, 1919, the plaintiff received from the insurance company \$102,052.96 in the aggregate "as a loan pending collection of loss on 868 bales of silk waste ex

steamer "Canada Maru" refund of the loan to be made to said Atlantic Mutual Insurance Company out of the proceeds of the collection specified." [30]

With respect to shipments such as involved in this action the insurance policy contained a clause as follows: "It is by the assured expressly stipulated in respect to land carriers that no assignment shall be made to such carriers of claim for loss or contribution of any kind under this policy, nor shall the right of subrogation be abrogated or impaired by or through any agreement intended to relieve such carriers from duties or obligations imposed or recognized by the common law or otherwise. [31]

As conclusions of law, the Court finds:

1. That plaintiff is the real party in interest and entitled to maintain this suit.
2. That the contract between Cheeney and Taylor for the movement of the goods from Tacoma by silk train in refrigerator-cars was valid and binding on the defendant and no good sufficient reason is shown for defendant's refusal to comply therewith.
3. That plaintiff is entitled to have and recover from defendant damages in the sum of \$105,622.90 with costs and disbursements properly taxed in this action, and that a judgment in favor of the plaintiff and against the defendant shall be entered accordingly.

To each of the foregoing facts and conclusions of

law defendant excepts and such exceptions are hereby allowed.

R. S. BEAN,
Judge.

December 7, 1921.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Dec. 9, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [32]

In the United States District Court for the
Western District of Washington, Southern
Division.

AMERICAN SILK SPINNING COMPANY,
Plaintiff,

vs.

DIRECTOR GENERAL OF RAILROADS (Op-
erating Chicago, Milwaukee & St. Paul Rail-
way),

Defendant.

**Findings of Fact and Conclusions of Law, With
Exceptions Allowed.**

This cause came on regularly for hearing in October, 1921, before the undersigned Judge of the United States District Court, sitting by special assignment, the plaintiff appearing by its attorneys, J. M. Richardson Lyeth, Esq., and Bruce C. Shorts of the firm of Ballinger, Battle, Hulbert & Shorts; and the defendant appearing by its attorneys, George W. Korte, Esq., and C. H. Hanford,

Esq., and thereupon by stipulation in writing signed by the parties, jury trial was waived.

And now at this time, the Court having duly considered the pleadings, evidence and arguments of counsel, finds the facts in the case to be as follows:

I.

That the plaintiff at all the times hereinafter mentioned was and still is a corporation organized and existing under the laws of the State of Rhode Island, with its principal place of business in the City of Providence in said state, and is a citizen of said state.

II.

That the defendant at all times herein mentioned was the United States Director General of Railroads [33] duly appointed and acting under and by virtue of an Act of Congress, and at all times herein mentioned was operating as a common carrier of freight and passengers the railroad lines of the Chicago, Milwaukee & St. Paul Railway Company between the Cities of Seattle and Tacoma, Washington, and the City of Chicago, Illinois. That the Chicago, Milwaukee & St. Paul Railway Company at the times herein mentioned was and still is a corporation organized and existing under the laws of the State of Wisconsin, and is a citizen of said state.

III.

That on June 21st and 24th, 1918, the plaintiff caused to be shipped, freight prepaid, from Canton, China, 1000 bales of waste silk, of which 700 bales were consigned to the order of Messrs. Heidelberg,

Ickelheimer & Co., of New York, and 300 bales to Goldman, Sachs & Co., New York, all destined to plaintiff, American Silk Spinning Company at Providence, Rhode Island. That 500 bales were of the quality known as "No. 1 Canton Steam Waste Silk" and 500 bales were of the quality known as "No. 2 Canton Steam Waste Silk."

Defendant's exception allowed.

IV.

That the said 1000 bales of waste silk were delivered at Canton, China, to Osaka Shosen Kaisha, Ltd., and upon delivery to and receipt of said bales in good order and conditions, said Osaka Shosen Kaisha, Ltd., on behalf of itself, separately and as a duly authorized agent of the defendant operating lines of railroad, as aforesaid, did jointly execute and deliver four certain through Trans-Pacific and Overland Bills of Lading [34] covering the transportation of said 1000 bales of waste silk from Canton, China, to Providence, Rhode Island, and consigned and destined as aforesaid.

V.

That by the terms of said bills of lading said waste silk was to be carried by said Osaka Shosen Kaisha, Ltd., from Canton, China, to Seattle, or Tacoma, Washington, on its steamship "Canada Maru" and there delivered to the defendant to be carried by defendant over the lines of the Chicago, Milwaukee & St. Paul Railway Company and other lines of railroad connecting therewith to the destination named in said bills of lading, to wit, Provi-

dence, Rhode Island, and there delivered to the order of said consignee.

VI.

That said goods were purchased by the plaintiff of the manufacturer in China on four months' letter of credit from date of shipment, issued by the consignee banks, and on August 7, 1918, and prior to the arrival of the goods at Tacoma, the consignee banks without receiving immediate payment of the purchase price, endorsed and delivered the bills of lading to the plaintiff, and plaintiff subsequently paid the drafts which had been guaranteed by letters of credit issued by the consignee banks, when the same became due.

VII.

That said bills of lading were numbered, dated and covered the said 1000 bales of waste silk as follows:

B/L No. 8 dated June 21, 1918, 300 bales.

B/L No. 9 dated June 21, 1918, 200 bales.

B/L No. 10 dated June 24, 1918, 200 bales.

B/L No. 11 dated June 24, 1918, 300 bales. [35]

That each of said bills of lading contained stipulations of the following tenor: "Any carrier or party liable on account of loss of or damages to any part of said property shall have the right of subrogation for the full benefit of any insurance that may have been effected upon or on account of said property."

"Except in the case of negligence in the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the

carrier or party in possession) the carrier or party in possession shall not be liable for loss, damage or delay occurring while the property described herein is stopped and held in transit upon request of the shipper, owner or party entitled to make such request; or resulting from a defect or vice in the property, or from riots or strikes.”

That at the time the bills of lading were issued freight for the through transportation service was prepaid at the tariff rates as to the railroad service prescribed in the Tariff previously filed with the Interstate Commerce Commissioner and then in effect.

VIII.

That on July 30, 1918, and during the time said 1000 bales of waste silk were in course of transportation on said S. S. “Canada Maru” under the said bills of lading, said vessel stranded and large quantities of salt water entered her holds, and as a result 500 bales of said waste silk known as “Canton Steam Waste Silk No. 1” and 367 bales of said waste silk known as “Canton Steam Waste Silk No. 2” became wet from the contact with the salt water.

Defendant’s exception allowed. [36]

That upon arrival of said S. S. “Canada Maru” at Tacoma, Washington, the said 1000 bales of waste silk were discharged from said vessel. Such discharge was begun early in the morning of August 12, 1918.

IX.

That the 133 bales of waste silk which had not

been wet with salt water were in due course transported by defendant to destination.

That the remaining 867 bales which had been wet with salt water were discharged on the dock, which dock belonged to the Chicago, Milwaukee & St. Paul Railway Company, and was then being maintained and operated by defendant as a part of said railway system.

That after the vessel had commenced discharging the wet silk, Mr. Taylor, the representative of the underwriters and owners thereof, called on Mr. Cheeney, the chief clerk of the freight agent at Tacoma, and who was in charge of the dock and the movement of freight therefrom, and told Mr. Cheeney that he was very anxious to have quick dispatch of the wet silk, and that it was important that it should go forward in its wet condition. Cheeney and Taylor looked at the silk as it was being discharged from the vessel and placed on the dock, and Taylor requested that it be forwarded by silk train service in refrigerator-cars, and Cheeney agreed to so forward it, stating that the cost of such service would be \$7.50 per hundred pounds as against the bill of lading freight of \$1.75 per hundred, and that there would be an additional charge for refrigeration of approximately \$21.00 per car to pay, all of which Taylor agreed to. On August 14th, Taylor again called on Cheeney to see how the matter was progressing, and [37] he and Cheeney again examined the silk, and Taylor was told by Cheeney that the cars had been ordered and would be brought in shortly, and thereafter the

cars were brought in, and approximately one-half of the wet silk bales were loaded on two or more refrigerator-cars for shipment.

Defendant's exception allowed.

X.

That after thus contracting for and accepting all of said 867 bales of wet waste silk for transportation as aforesaid and after loading approximately one-half of said bales in refrigerator-cars as aforesaid, the defendant without the consent of plaintiff and in disregard of plaintiff's protest, failed and refused to transport said bales of wet waste silk, or any part thereof to destination, and thereafter defendant caused the bales loaded in said refrigerator-cars to be unloaded on said dock, all contrary to the terms and requirements of the aforesaid contract of carriage.

Defendant's exception allowed.

XI.

That at the time said 867 wet bales were accepted for shipment as aforesaid and at all times thereafter, the same were properly packed and in condition for safe transportation by defendant from Tacoma to destination by silk or passenger train service in refrigerator-cars, and such transportation was not prohibited by any regulation of the Interstate Commerce Commission.

Defendant's exception allowed.

XII.

That thereafter defendant demanded that said bales be dried and reconditioned before defendant would transport the same to destination, and plain-

tiff in order to secure transportation [38] of said bales to destination was required to and did cause the same to be dried.

That the reasonable cost and expense of drying said bales was \$5,000, which sum plaintiff paid therefor.

Defendant's exception allowed.

That plaintiff in taking possession of said 867 bales of wet waste silk for the purpose of drying it as aforesaid did so without relinquishing any of plaintiff's rights in the premises.

Defendant's exception allowed.

That after said 867 bales had been dried as aforesaid, the defendant transported the same without additional freight or charges to destination, to wit: Providence, Rhode Island, and there delivered the same to plaintiff.

XIII.

That the drying of said 867 bales of wet waste silk was done in a reasonable and proper manner.

That the natural and proximate result of the drying of said bales of wet waste silk was a weakening of the fiber and a discoloration of said waste silk.

Defendant's exception allowed.

That upon arrival of said 867 bales of waste silk at destination, the reasonable, fair market value thereof was the sum of \$14,815.67, and no more.

Defendant's exception allowed.

XIV.

That had defendant carried out its contract with plaintiff and transported said 867 bales of wet

waste silk to destination by silk or passenger train service in refrigerator-cars, the fair market value of 500 bales of No. 1 waste silk upon delivery at destination would have been \$95,394.25, less 10%, and the fair market value of 367 [39] bales of No. 2 waste silk upon delivery at destination would have been \$40,342.27, less 10%, and the total net value of said 867 bales upon delivery at destination would have been \$122,163.32.

Defendant's exception allowed.

XV.

That in addition to the bill of lading freight, the contract between the defendant and plaintiff relating to the transportation of said 867 bales of wet waste silk from Tacoma, Washington, to destination by silk or passenger train service in refrigerator-cars required the plaintiff to pay further freight and charges amounting to \$6,724.75.

Defendant's exception allowed.

XVI.

That as a result of the failure and refusal of the defendant to perform its contract to transport said 867 bales of wet waste silk from Tacoma, Washington, to destination by silk or passenger train service in refrigerator-cars, the plaintiff has been damaged in the sum of \$105,622.90.

Defendant's exception allowed.

XVII.

That all of said 1000 bales of waste silk were insured against damage in transit from Hong Kong to Providence, Rhode Island, by an open policy issued by the Atlantic Mutual Insurance Company,

and on February 6, March 7, and March 12, 1919, the plaintiff received from the insurance company \$102,052.96 in the aggregate "as a loan pending collection of loss on 868 bales of silk waste ex steamer 'Canada Maru,' refund of the loan to be made to said Atlantic Mutual Insurance Company out of the proceeds of the collection specified."

Defendant's exception allowed. [40]

With respect to shipments such as involved in this action the insurance policy contained a clause as follows: "It is by the assured expressly stipulated in respect to land carriers that no assignment shall be made to such carriers of claim for loss or contribution of any kind under this policy, nor shall the right of subrogation be abrogated or impaired by or through any agreement intended to relieve such carriers from duties or obligations imposed or recognized by the common law or otherwise. [41]

As conclusion of law the Court finds:

1. That plaintiff is the real party in interest and entitled to maintain this suit.

Defendant's exception allowed.

2. That the contract between Cheeney and Taylor for the movement of the goods from Tacoma by silk train in refrigerator-cars was valid and binding on the defendant and no good sufficient reason is shown for defendant's refusal to comply therewith.

Defendant's exception allowed.

3. That plaintiff is entitled to have and recover from defendant damages in the sum of \$105,622.90 with costs and disbursements properly taxed in this

action, and that a judgment in favor of the plaintiff and against the defendant shall be entered accordingly.

Defendant's exception allowed.

To each of the foregoing facts and conclusions of law defendant excepts as above specified and such exceptions are hereby allowed, and for the purpose of making a record of said exceptions this copy may be filed.

R. S. BEAN,
Judge.

December 7, 1921.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Dec. 14, 1921. F. M. Harshberger, Clerk. By Ed. M. Lakin, Deputy. [42]

District Court of the United States, Western District of Washington, Southern Division.

No. 2905.

AMERICAN SILK SPINNING COMPANY,
Plaintiff,

vs.

DIRECTOR GENERAL OF RAILROADS (Operating Chicago, Milwaukee & St. Paul Railway),

Defendant.

Defendant's Proposed Findings of Fact and Conclusions of Law — Refusal by the Court and Exceptions Allowed.

By stipulation in writing, signed by the parties and filed, the trial of this cause by jury was waived, and the trial came on at Seattle without being transferred from Tacoma where the record exists.

The trial proceeded before Honorable R. S. Bean, United States District Judge, presiding, and thereupon the parties respectively introduced their evidence and submitted the cause on their arguments.

On due consideration of the pleadings, evidence and arguments, the Court finds the facts of the case to be as follows:

FINDINGS OF FACT.

1. The paragraphs numbered "first" and "second" of the plaintiff's complaint are not controverted and the allegations thereof are true.

2. On the 21st and 24th days of June, 1918, four bills of lading were issued at Canton, China, for the transportation of one thousand (1,000) bales of silk waste from Hong Kong, China, to Tacoma, Washington, by the steamship "Canada Maru," and from Tacoma, Washington, to Providence, Rhode Island, on the Chicago, Milwaukee [43] & St. Paul Railway and connecting lines, and said 1,000 bales were received in apparent good order on board of the "Canada Maru."

3. On the 30th day of July, 1918, the "Canada Maru," with said 1,000 bales on board, met with a

maritime disaster by striking on rocks and stranding on the coast of Washington near Cape Flattery, and said vessel was thereby so badly damaged that her hold and cargo space were filled with sea water and eight hundred and sixty-seven (867) of said bales were completely submerged in the hold of said vessel.

Refused—Defendant excepts.

4. Said vessel was rescued from her perilous position and towed to Tacoma, where she arrived on the 10th day of August, 1918, and from thence proceeded to a drydock for necessary temporary repairs before commencing to discharge cargo. After returning to Tacoma she commenced discharging said bales of silk on the 12th day of August and completed discharging said bales on the 16th day of August, 1918.

Refused—Defendant excepts.

5. When discharged from said vessel, one hundred thirty-three (133) of said bales were found to be undamaged and the same were promptly transported to destination. The other 867 bales were completely saturated with sea water, whereby heat and malodorous fumes emanated therefrom to such an extent that the stevedores were able only with great difficulty to remove the same from the hold of said vessel, and, after being unloaded on the dock, heating and diffusion of malodorous fumes continued, to such an extent that, after inspection by a cargo surveyor, said 867 bales were, by agents of the Chicago, Milwaukee & St. Paul Railway Company and said cargo surveyor, deemed to be

dangerous to handle, dangerous to carry by railway from Tacoma to Providence, and unfit for transportation [44] without being reconditioned.

Refused—Defendant excepts.

6. All of said 1000 bales were insured against damage in transit from Hong Kong to Providence by the Atlantic Mutual Insurance Company; and during the time of the unloading of the said bales from said vessel, Frank G. Taylor, representing the Underwriters, by direction of the Atlantic Mutual Insurance Company, visited the premises where said wet bales were, for the time being, situated, and became informed as to the condition thereof, and, after being definitely informed by agents of the Chicago, Milwaukee & St. Paul Railway Company that the same were deemed to be unfit for transportation and that said Railway Company would not assume the risk of transporting the same from Tacoma in their wet condition, caused said wet bales to be removed from Tacoma, to Seattle for the purpose of being reconditioned by drying the same, and entered into a contract with the Pacific Oil Mills, at Seattle, to perform the service of drying and rebaling the contents of said bales after being dried and redelivering the same, which contract was performed by said Pacific Oil Mills, and for said service said Taylor paid Five Thousand (\$5,000) Dollars.

Refused—Defendant excepts.

7. That the time consumed in completing said

operation of drying extended until the 20th day of January, 1919.

Refused—Defendant excepts.

8. That, after being conditioned as aforesaid, all of the contents of said 867 bales were, by the Chicago, Milwaukee & St. Paul Railway and connecting lines, transported from Seattle to, and delivered at Providence, Rhode Island, that service being completed on the 30th day of January, 1919.

Refused—Defendant excepts. [45]

9. At the times referred to in these findings, the steamship "Canada Maru" was being operated by a foreign corporation, namely Osaka Shosen Kisha, Ltd., and the four bills of lading aforesaid were issued by said foreign corporation in its own behalf and as agent for the Chicago, Milwaukee & St. Paul Railway Company, then being operated by the Director General of Railroads, and freight for the through transportation service was prepaid at the tariff rates, as to the railway service, prescribed in tariffs previously filed with the Interstate Commerce Commission and then in effect.

By three of said bills of lading, covering 700 of said 1000 bales, the same were consigned to the order of Heidelbach, Ickelheimer Co., New York, and, by the other of said bills of lading, covering 300 of said bales, the same were consigned to the order of Goldman Sachs & Co., of New York, and all of said bills of lading, after being endorsed by said consignees, were received by the plaintiff herein on the 7th day of August, 1918.

10. On the security of letters of credit all of

said 1,000 bales were sold by the manufacturers in China on a credit of four (4) months from the date of shipment thereof from China; the consignees aforesaid, without receiving immediate payment of the purchase price of said merchandise, at the time of delivering said bills of lading to the plaintiff, took from said plaintiff a trust receipt, in effect stipulating that said merchandise belonged to said consignees until the purchase price aforesaid should be paid, which payment was made at the time of, and not before, the expiration of said four months period of credit, which was on or about October 24th, 1918, and at that time, by said payment, the plaintiff acquired ownership of said merchandise.

Refused—Defendant excepts. [46]

11. In whatever way said merchandise became damaged or diminished in value, subsequent to the unloading thereof from the "Canada Maru" such damage or impairment of value occurred and was fully consummated during the time intervening between the 12th day of August and the 24th day of October, 1918, during which time the consignees, Heidlebach, Ickelheimer & Co. and Goldman, Sachs & Co., named respectively in said bill of lading, were owners of said merchandise.

Refused—Defendant excepts.

12. The market value of the silk waste contained in said 867 bales, on arrival at Providence in the due and ordinary course of transportation, if then undamaged, would have been \$125,653.78; that gross sum being arrived at by computation of the market value of two grades of silk waste, No. 1 grade being

at the rate of \$1.51 per pound, of which there was 46,613 pounds, and No. 2 grade at .87 per pound, and there is a total failure on the part of plaintiff to introduce any evidence respecting the weight of the silk of said No. 2 grade; and there is a total failure on the part of plaintiff to prove the difference in market value between the sound value—viz: \$125,653.78—and the market value of said merchandise at the time of its delivery at Providence in the state it was after being reconditioned as aforesaid.

Refused—Defendant excepts.

13. That in the months of February and March, 1919, the Atlantic Mutual Insurance Company paid the plaintiff sums of money aggregating Seventy-seven Thousand Seven Hundred Fifty-two and 96/100 dollars, and there is a total failure on the part of plaintiff to prove that any damage by deterioration of said merchandise, or expenses chargeable as a loss incidental to the transportation [47] thereof, amounts to any sum in excess of said \$77,752.96 paid by said Insurance Company as aforesaid, whereby the plaintiff previous to the commencement of this action, received full compensation for whatever loss or damage it may have sustained in connection with the transportation of said merchandise.

Refused—Defendant excepts.

14. That each of the said four bills of lading contains a stipulation of the following tenor:

“Any carrier or party liable on account of loss or damage to any of said property, shall,

by right of subrogation, have the full benefit of any insurance that may have been effected upon or on account of said property.”

15. That each of said four bills of lading contains a stipulation of the following tenor:

“2. Except in the case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage or delay occurring while the property described herein is stopped and held in transit upon request of the shipper, owner or party entitled to make such request, or resulting from a defect or vice in the property, or from the riots, or strikes.”

16. The defendant did not make, or enter into, any agreement for transportation of said 867 bales while in the wet condition in which they were when discharged from the “Canada Maru” or any agreement whatsoever respecting the transportation of said merchandise other than, or different from, the written contract contained in said four bills of lading, nor at any time accept said 867 bales, or any part thereof, for transportation without being reconditioned.

Refused—Defendant excepts.

17. The defendant did not, by any act or omission, cause, or contribute to the cause, of any damage whatever or impairment of [48] value of said merchandise, or any part thereof, or in any manner fail to fully and completely perform his

contract for that part of the transportation by his railroad.

Refused—Defendant excepts.

The foregoing findings of fact requested by the defendant were refused and the exceptions noted were allowed by the Court.

R. S. BEAN,
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Dec. 14, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [49]

In the United States District Court for the Western District of Washington, Southern Division.

No. 2905.

AMERICAN SILK SPINNING COMPANY,
Plaintiff,

vs.

DIRECTOR GENERAL OF RAILROADS (Operating Chicago, Milwaukee & St. Paul Railway),

Defendant.

Defendant's Bill of Exceptions to the Court's Findings of Fact and Conclusions of Law.

The defendant, claiming error in the Court's decision contained in the findings of facts and conclusions of law filed herein, takes exception thereto, as follows:

I.

Referring to the finding in paragraph numbered III the defendaont excepts to that portion thereof in the following words:

“That 500 bales were of the quality known as ‘No. 1 Canton Steam Waste Silk’ and 500 bales were of the quality known as ‘No. 2 Canton Steam Waste Silk’ ”;

For the reason that there is no evidence indicating how many of the bales of Canton Waste Silk were of the quality known as No. 1, or the number of bales of the quality indicated as No. 2.

II.

Referring to the finding of fact contained in paragraph thereof numbered VIII the defendant excepts to that part thereof in the following words:

“That on July 30, 1918, and during the time said 1000 bales of waste silk were in course of transportation on said S. S. ‘Canada Maru’ under the said bills of lading, said vessel stranded and large quantities of salt water entered her holds, and as a result 500 bales of waste silk known as ‘Canton Steam waste Silk No. 1’ and 367 bales of said waste silk known as ‘Canton Steam Waste Silk No. 2’ became wet from the contact with the salt water.”

For the reason that there is no evidence upon which the Court could find that 500 of the bales that were wet with salt water were of the quality known as Canton Steam Waste Silk No. 1, nor [50] from which the Court could find that 367 of the wet

bales were of the quality known as Canton Steam Waste Silk No. 2.

III.

Referring to the finding of fact contained in the paragraph thereof numbered IX the defendant excepts to that portion thereof in the following words:

“That after the vessel had commenced discharging the wet silk, Mr. Taylor, the representative of the underwriters and owners thereof, called on Mr. Cheeney, the Chief Clerk of the Freight Agent at Tacoma, and who was in charge of the dock and the movement of freight therefrom, and told Mr. Cheeney that he was very anxious to have quick dispatch of the wet silk, and that it was important that it should go forward in its wet condition. Cheeney and Taylor looked at the silk as it was being discharged from the vessel and placed on the dock, and Taylor requested that it be forwarded by silk train service in refrigerator-cars, and Cheeney agreed to so forward it, stating that the cost of such service would be \$7.50 per hundred pounds as against the bill of lading freight of \$1.75 per hundred, and that there would be an additional charge for refrigeration of approximately \$21.00 per car to pay, all of which Taylor agreed to.

On August 14th, Taylor again called on Cheeney to see how the matter was progressing, and he and Cheeney again examined the silk, and Taylor was told by Cheeney that the cars

had been ordered and would be brought in shortly, and thereafter the cars were brought in, and approximately one-half of the wet silk bales were loaded on two or more refrigerator-cars for shipment.”

For the reason that there is no evidence upon which the Court could find that Cheeney was in charge of the dock or the movement of freight therefrom, or that Cheeney had any authority to make or enter into any agreement respecting the transportation of freight, and for the further reason that the contradicted evidence in the case and an the evidence bearing on that point proves affirmatively that Cheeney did not have any authority whatever to make or enter into any agreement respecting the transportation of freight; and for the further reason that by the Interstate Commerce law railway carriers are strictly prohibited [51] from entering into special contracts for special service at special rates for transportation of freight; and for the further reason that Taylor did not in fact pay, or tender to pay, or make any promise binding upon the plaintiff to pay extra charges for the service required for transportation of 867 bales by a silk train, or the extra charge for transportation of said bales in refrigerator-cars; and for the further reason that said finding does not include the requirement demanded by Taylor for sprinkling or drenching said wet bales so as to keep them continuously wet during the time of transit to destination.

IV.

Defendant excepts to all of said findings included in paragraph thereof numbered X, for the reason that there is no evidence on which the Court could find that there was any contract for transportation of 867 bales in their wet condition, nor on which the Court could find that the unloading of the refrigerator-cars was contrary to the terms and requirements of any contract.

V.

Defendant excepts to all of said findings contained in paragraph thereof numbered XI, for the reason that there is no evidence on which the Court could find that said wet bales were in a condition fit for safe transportation, and for the further reason that the evidence proves affirmatively that the wetting of said 867 bales generated heat and caused diffusion of offensive fumes so that the same were difficult to handle, liable to cause spontaneous combustion and fire while confined in freight cars, and were totally unfit for transportation without being reconditioned; and for the further reason that the Court's finding that transportation [52] of said bales while in a wet condition was not prohibited by any regulation of the Interstate Commerce Commission is immaterial.

VI.

Defendant excepts to that part of the findings contained in paragraph thereof numbered XII in the following words:

“That the reasonable cost and expense of drying said bales was \$5,000, which sum plaintiff paid therefor.”

For the reason that there is no evidence on which the Court could find that the plaintiff paid the cost of drying and reconditioning said 867 bales; but, on the contrary, the uncontradicted evidence proves that the \$5,000 was paid by Taylor, the underwriter’s agent, in that behalf.

VII.

Defendant excepts to that part of the findings contained in paragraph thereof numbered XII, in the following words:

“That plaintiff in taking possession of said 867 bales of wet waste silk for the purpose of drying it as aforesaid did so without relinquishing any of plaintiff’s rights in the premises.”

For the reason that there is no evidence upon which the Court could find that the plaintiff or Taylor made any reservation of rights in connection with the drying and reconditioning of said 867 bales under Taylor’s direction.

VIII.

Defendant excepts to that part of the findings contained in paragraph thereof numbered XIII, in the following words:

“That the natural and proximate result of the drying of said bales of waste silk was a weakening of the fiber and a discoloration of said waste silk.”

For the reason that there is no evidence on which the Court could find that the drying of said bales weakened the fiber or caused a discoloration of said waste silk, but, on the contrary, the plaintiff's [53] complaint alleges the effect of the drying to have been a damage only by discoloration, and the uncontradicted evidence proves that the weakening of the fiber of the silk and discoloration thereof was caused by the wetting of said bales and not by the drying.

IX.

Defendant excepts to that part of the findings contained in paragraph thereof numbered XIII, in the following words:

“That upon arrival of said 867 bales of waste silk at destination, the reasonable, fair market value thereof was the sum of \$14,815.67, and no more.”

For the reason that there is no evidence on which the Court could find that the reasonable, fair market value of said 867 bales at the time of delivery thereof at destination was not in excess of the sum of \$14,815.67.

X.

Defendant excepts to all of said findings contained in paragraph thereof numbered XIV, for the reason and on the ground that there is no evidence on which the Court could find that of said 867 bales 500 bales were of the quality of grade known as No. 1, or find that the market value of the bales of No. 1 was \$95,394.25, less 10%; or that

the market value of the No. 2 was \$40,342.27, less 10%; or that the total net value of said 867 bales was \$122,163.32. On the contrary, the only evidence as to quantities and value of 867 bales of the respective grades No. 1 and No. 2, is contained in the deposition of plaintiff's witness Edward W. Lownes in which he stated the quantity of the No. 1 grade to have been 46,613 pounds and that the total net value of said 867 bales was \$113,088.40. [54]

XI.

Defendant excepts to all of the findings contained in paragraph thereof numbered XV, for the reason that there is no evidence on which the Court could find that the amount payable by the plaintiff for the extra services required in transportation of said 867 bales to destination in their wet condition amounted to \$6724.75, and for the reason and on the ground that there was no contract fixing the amount payable for such extra service and the uncontradicted evidence proves that the tariffs on file with the Interstate Commerce Commission and the bill of lading contracts under which the transportation service was undertaken are alike silent as to any rate payable for such or similar extra service, and the amount of extra charges could not be provided for by special agreement.

XII.

Defendant excepts to all of the findings contained in paragraph thereof numbered XVI for the reason that there is no evidence on which the Court could find the amount of plaintiff's damages to be \$105,-

622.90, or any sum whatever, nor on which the Court could find any damages whatever caused by any act, omission or failure on the part of the defendant to fully perform the contract undertaken and covered by the bills of lading.

XIII.

Defendant excepts to so much of the findings contained in paragraph numbered XVII as amount to a decision that all or any of the money paid to the plaintiff by the Atlantic Mutual Insurance Company was a loan, for the reason that the payments were in discharge of the Insurance Company's obligation as an insurer and without any obligation on the part of the plaintiff to ever repay any [55] part of the money so received.

XIV.

Defendant excepts to paragraph numbered I of the Court's conclusions of law, for the reason that by the uncontradicted evidence it is proved that the plaintiff is not the real party in interest, but commenced and maintained this action for the sole benefit of the Atlantic Mutual Insurance Company; and by the uncontradicted evidence it is proved that the plaintiff was not the owner of the 867 bales at the time the same were damaged.

XV.

Defendant excepts to paragraph numbered 2 of the Court's conclusions of law, for the reason that there was no contract between Cheeney and Taylor for the movement of the 867 bales; for the further reason that Cheeney was not an authorized agent to make any contract binding on the defendant

with respect to the transportation of freight; and for the further reason that such a contract, if it had been formally made, would be unenforceable because expressly forbidden by the provisions of the Interstate Commerce Law.

XVI.

Defendant excepts to the third paragraph of the Court's conclusions of law for the reason that the same is contrary to the facts of the case and contrary to law.

XVII.

The defendant requested the Court to find and include in its findings of fact the following:

“On the 30th day of July, 1918, the ‘Canada Maru,’ with said 1000 bales on board, met with a maritime disaster by striking on rocks and stranding on the coast of Washington near Cape Flattery, and said vessel was thereby so badly damaged that her hold and cargo space were filled with sea water and eight hundred and sixty-seven (867) of said bales were completely submerged in the hold of said vessel.”

[56]

And to the refusal of the Court to make and certify said finding the defendant excepts.

XVIII.

The defendant requested the Court to find and include in its findings of fact the following:

“Said vessel was rescued from her perilous position and towed to Tacoma, where she arrived on the 10th day of August, 1918, and from thence proceeded to a drydock for nec-

essary temporary repairs before commencing to discharge cargo. After returning to Tacoma she commenced discharging said bales of silk on the 12th day of August, and completed discharging said bales on the 16th day of August, 1918.”

And to the refusal of the Court to make and certify said finding the defendant excepts.

XIX.

The defendant requested the Court to find and include in its findings of fact the following:

“When discharged from said vessel, one hundred thirty-three (133) of said bales were found to be undamaged and the same were promptly transported to destination. The other 867 bales were completely saturated with sea water, whereby heat and malodorous fumes emanated therefrom to such an extent that the stevedores were able only with great difficulty to remove the same from the hold of said vessel, and, after being unloaded on the dock, heating and diffusion of malodorous fumes continued, to such an extent that, after inspection by a Cargo Surveyor, said 867 bales were, by agents of the Chicago, Milwaukee & St. Paul Railway Company and said Cargo Surveyor, deemed to be dangerous to handle, dangerous to carry by railway from Tacoma to Providence, and unfit for transportation without being reconditioned.’

And to the refusal of the Court to make and certify such finding the defendant excepts.

XX.

The defendant requested the Court to find and include in its findings of facts the following: [57]

“All of said 1000 bales were insured against damage in transit from Hong Kong to Providence by the Atlantic Mutual Insurance Company; and during the time of the unloading of said bales from said vessel, Frank G. Taylor, representing the Underwriters, by direction of the Atlantic Mutual Insurance Company, visited the premises where said wet bales were, for the time being, situated, and became informed as to the condition thereof, and, after being definitely informed by agents of the Chicago, Milwaukee & St. Paul Railway Company that the same were deemed to be unfit for transportation and that said Railway Company would not assume the risk of transporting the same from Tacoma in their wet condition, caused said wet bales to be removed from Tacoma to Seattle for the purpose of being reconditioned by drying the same, and entered into a contract with the Pacific Oil Mills, at Seattle, to perform the service of drying and re-baling the contents of said bales after being dried and re-delivering the same, which contract was performed by said Pacific Oil Mills, and for said service said Taylor paid Five Thousand (\$5,000) Dollars.”

And to the refusal of the Court to make and certify such finding the defendant excepts.

XXI.

The defendant requested the Court to find and

include in its findings of facts the following:

“That the time consumed in completing said operation of drying extended until the 20th day of January, 1919.”

And to the refusal of the Court to make and certify said finding the defendant excepts.

XXII.

The defendant requested the Court to find and include in its findings of facts the following:

“That, after being reconditioned as aforesaid, all of the contents of said 867 bales were, by the Chicago, Milwaukee & St. Paul Railway and connecting lines, transported from Seattle to, and delivered at, Providence, Rhode Island, that service being completed on the 30th day of January, 1919.”

And to the refusal of the Court to make and certify said finding the defendant excepts. [58]

XXIII.

The defendant requested the Court to find and include in its findings of facts the following:

“On the security of letters of credit all of said 1000 bales were sold by the manufacturers in China on a credit of four (4) months from the date of shipment thereof from China; the consignees aforesaid, without receiving immediate payment of the purchase price for said merchandise, at the time of delivering said bills of lading to the plaintiff, took from said plaintiff a trust receipt, in effect stipulating that said merchandise belonged to said consignees until their purchase price aforesaid should be

paid, which payment was made at the time of, and not before, the expiration of said four months period of credit, which was on or about October 24th, 1918, and at that time, by said payment, the plaintiff acquired ownership of said merchandise.”

And to the refusal of the Court to make and certify said finding the defendant excepts.

XXIV.

The defendant requested the Court to find and include in its finding of facts the following:

“In whatever way said merchandise became damaged or diminished in value, subsequent to the unloading thereof from the ‘Canada Maru,’ such damage or impairment of value occurred and was fully consummated during the time intervening between the 12th day of August, and the 24th day of October, 1918, during which time the consignees, Heidelbach, Ickelheimer & Co. and Goldman, Sachs & Co., named respectively in said bills of lading, were owners of said merchandise.”

And to the refusal of the Court to make and certify said finding the defendant excepts.

XXV.

The defendant requested the Court to find and include in its findings of facts the following:

“The market value of the silk waste contained in said 867 bales, on arrival at Providence in the due and ordinary course of transportation, if then undamaged, would have been \$125,653.78; that gross sum being arrived at by

computation of the market value of two grades of silk waste, No. 1 grade being at the rate of \$1.51 per pound, of which there was 46,613 pounds, and No. 2 grade at .87 per pound, and there is a total failure on the part of plaintiff to introduce any [59] evidence respecting the weight of the silk of said No. 2 grade; and there is a total failure on the part of plaintiff to prove the difference in market value between the sound value—viz: \$125,653.78—and the market value of said merchandise at the time of its delivery at Providence in the state it was after being reconditioned as aforesaid.”

And to the refusal of the Court to make and certify said finding the defendant excepts.

XXVI.

The defendant requested the Court to find and include in its findings of facts the following:

“That in the months of February and March, 1919, the Atlantic Mutual Insurance Company paid the plaintiff sums of money aggregating Seventy-seven Thousand Seven Hundred Fifty-two and 96/100 Dollars, and there is a total failure on the part of plaintiff to prove that any damage by deterioration of said merchandise, or expenses chargeable as a loss incidental to the transportation thereof, amounts to any sum in excess of said \$77,752.96, paid by said Insurance Company as aforesaid, whereby the plaintiff, previous to the commencement of this action, received full compensation for whatever loss or damage it may have sustained in con-

nection with the transportation of said merchandise.”

And to the refusal of the Court to make and certify said finding the defendant excepts.

XXVII.

The defendant requested the Court to find and include in its findings of facts the following:

“The defendant did not make, or enter into, any agreement for transportation of said 867 bales while in the wet condition in which they were discharged from the ‘Canada Maru’ or any agreement whatsoever respecting the transportation of said merchandise other than, or different from, the written contract contained in said four bills of lading, nor at any time accept said 867 bales, or any part thereof, for transportation without being reconditioned.”

And to the Court’s refusal to make and certify said finding the defendant excepts. [60]

XXVIII.

The defendant requested the Court to find and include in its findings of facts the following:

“The defendant did not, by any act or omission, cause, or contribute to the cause, of any damage whatever or impairment of value of said merchandise, or any part thereof, or in any manner fail to fully and completely perform his contract for that part of the transportation by his Railroad.”

And to the refusal of the Court to make and certify said finding the defendant excepts.

XXI.

The defendant requested the Court to state as a conclusion of law as follows:

“The plaintiff herein is not the real party in interest nor entitled by law to maintain this action.”

And to the refusal of the Court to make and certify such conclusion to the defendant excepts.

XXX.

The defendant requested the Court to state as a conclusion of law as follows:

“The defendant is not, by any act or omission, guilty of any breach whatever of the contract sued on herein.”

And to the refusal of the Court to make and certify such conclusion the defendant excepts.

XXXI.

The defendant requested the Court to state as a conclusion of law as follows:

“The defendant is entitled to have a judgment in his favor that the plaintiff take nothing by its action herein.”

And to the refusal of the Court to make and certify such conclusion the defendant excepts. [61]

XXXII.

The defendant requested the Court to state as a conclusion of law as follows:

“The judgment to be entered herein must be in favor of the defendant for the amount of his taxable costs and disbursements.”

And to the refusal of the Court to make and certify such conclusion the defendant excepts.

GEO. W. KORTE,

C. H. HANFORD,

Attorneys for Defendant.

BE IT REMEMBERED, That on this 13th day of December, 1921, the defendant presented and submitted the foregoing Bill of Exceptions, and the same and each of the exceptions therein noted is by the Court allowed.

R. S. BEAN,

Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Dec. 14, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [62]

District Court of the United States, Western District of Washington, Southern Division.

No. 2905.

AMERICAN SILK SPINNING COMPANY,
Plaintiff,

vs.

DIRECTOR GENERAL OF RAILROADS (Operating Chicago, Milwaukee & St. Paul Railway),

Defendant.

**Motion and Order Extending Time Sixty Days to
File Bill of Exceptions (Dated December 13,
1921).**

The defendant herein moves the Court for an order extending, for a period of sixty (60) days, the time for preparing and submitting his general bill of exceptions for use in the prosecution of a writ of error from the Circuit Court of Appeals for the Ninth Circuit, for the reason that the record is voluminous and it will not be practicable to complete a general bill of *exceptions* in less time.

GEO. W. KORTE,

C. H. HANFORD,

Attorneys for Defendant.

608 White Building,

Seattle, Washington.

ORDER.

On reading and filing the above motion, it is by the Court,

ORDERED: That the time for preparing and submitting the defendant's general bill of exceptions, for use in prosecuting a writ of error from the Circuit Court of Appeals for the Ninth Circuit, be, and the same is hereby, extended for a period of sixty (60) days from this 13th day of December, 1921.

R. S. BEAN,

Judge. [63]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern

Division. Dec. 14, 1921. F. M. Harshberger,
Clerk. By Ed M. Lakin, Deputy. [64]

In the United States District Court for the West-
ern District of Washington, Southern Division.

No. 2905.

AMERICAN SILK SPINNING COMPANY,
Plaintiff,

vs.

DIRECTOR GENERAL OF RAILROADS (Op-
erating Chicago, Milwaukee & St. Paul Rail-
way),

Defendant.

Judgment.

This cause having come on regularly for hearing in October, 1921, before the undersigned Judge of the United States District Court, sitting by special assignment, the plaintiff and defendant appearing by their respective attorneys of record, and having filed in this cause a stipulation in writing, signed by the respective parties, waiving a jury trial of the case; witnesses having been duly sworn and examined in open court by the respective parties, and other evidence having been introduced, and arguments having been made by the counsel of both parties, and the court having duly considered the pleadings and all the evidence and the arguments of counsel, and having heretofore made and filed in this cause its Findings of Facts and Conclusions

of Law, and all acts, conditions and things required to be done precedent to the entry of judgment in this cause having been properly done, happened and been performed in regular and due form, as required by law, and the Court being fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the plaintiff do have and recover from the [65] defendant damages in the sum of \$105,622.90, with costs and disbursements properly taxed in this action, in the sum of \$435.45, together with interest on said sums at the legal rate from date hereof until paid.

Dated December 15th, 1921.

R. S. BEAN,
Judge.

O. K. as to form.

GEO. W. KORTE,
C. H. HANFORD,
Attorneys for Defendant.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Dec. 16, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [66]

District Court of the United States, Western District of Washington, Southern Division.

No. 2905.

AMERICAN SILK SPINNING COMPANY,
Plaintiff,

vs.

DIRECTOR GENERAL OF RAILROADS (Operating Chicago, Milwaukee & St. Paul Railway),
Defendant.

Stipulation Extending Time Sixty Days to File General Bill of Exceptions (Dated December 14, 1921).

IT IS STIPULATED by and between the attorneys for the respective parties, that the defendant shall have, and is hereby granted, a period of sixty (60) days from and after the entry of judgment herein, within which to prepare, serve and file his general bill of exceptions for use in prosecuting a writ of error to the Circuit Court of Appeals for the Ninth Circuit.

Dated this 14th day of December, 1921.

BALLINGER, BATTLE, HULBERT &
SHORTS,

J. M. RICHARDSON LYETH,
Attorneys for Plaintiff.

GEO. W. KORTE,
C. H. HANFORD,
Attorneys for Defendant.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Dec. 17, 1921. F. M. Harshberger, Clerk. By Ed. M. Lakin, Deputy. [67]

United States District Court, Western District of Washington, Southern Division.

No. 2905.

AMERICAN SILK SPINNING COMPANY,
Plaintiff,

vs.

DIRECTOR GENERAL OF RAILROADS (Oper-
ating Chicago, Milwaukee & St. Paul Rail-
way),

Defendant.

Stipulation as to Settlement of Bill of Exceptions.

Plaintiff's attorneys, having examined defendant's proposed general bill of exceptions, and various corrections having been made, allowed and incorporated in said general bill of exceptions, and there being no further amendments or corrections to be proposed by the plaintiff, it is

STIPULATED, between the attorneys of record for the plaintiff and for the defendant, that the Judge sitting in the trial of this case may settle and certify said proposed bill of exceptions of the defendant without further notice or other compliance with the statutes and the rules of this court

relating to the settlement and certification of a true bill of exceptions.

Dated this 8th day of February, 1922.

BALLINGER, BATTLE, HULBERT &
SHORTS,

J. M. RICHARDSON LYETH,
Attorneys for Plaintiff.

GEO. W. KORTE,

C. H. HANFORD,

Attorneys for Defendant. [68]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Feb. 8, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [69]

United States District Court, Western District of
Washington, Southern Division.

No. 2905.

AMERICAN SILK SPINNING COMPANY, a
Corporation,

Plaintiff,

vs.

THE DIRECTOR GENERAL OF RAILROADS,
(Operating the Chicago, Milwaukee & St.
Paul Railway),

Defendant.

Order to Transmit Original Exhibits.

For the reason that it appears to the Court that

on a review of this case upon the writ of error, it will be necessary for the Appellate Court to inspect the original exhibits introduced by the respective parties on the trial of this cause, it is ordered by the Court that the Clerk transmit all of said original exhibits to the Circuit Court of Appeals, together with a transcript of the record herein.

Done in open court this 8th day of February, A. D. 1922.

R. S. BEAN,
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Feb. 8, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [70]

In the District Court of the United States for the Western District of Washington, Southern Division.

No. 2905.

AMERICAN SILK SPINNING COMPANY,
Plaintiff,

vs.

DIRECTOR GENERAL OF RAILROADS (Operating Chicago, Milwaukee & St. Paul Railway),

Defendant.

Defendant's Bill of Exceptions.

BE IT REMEMBERED, that pursuant to stipulations in writing, signed by the parties and on file, on the 28th day of October, 1921, at the courtroom of the United States District Court in the city of Seattle, this cause came on for trial before Honorable Robert S. Bean, United States District Judge for the District of Oregon, assigned to preside in this Court, without a jury, a jury having been waived by a stipulation in writing on file; the plaintiff appearing by its attorneys, J. M. Richardson Lyeth and Bruce C. Shorts, of the firm of Balingier, Battle, Hulbert & Shorts, and the defendant appearing by his attorneys, George W. Korte and C. H. Hanford.

And thereupon, testimony was introduced, exceptions taken and proceedings had as follows:
[71]

Testimony of Frank G. Taylor, for Plaintiff.

To prove the issue on the part of the plaintiff, FRANK G. TAYLOR was sworn as a witness and gave the following testimony:

Q. (Mr. LYETH.) Mr. Taylor, what is your business?

A. I am the General Agent of the Firemen's Fund Insurance Company.

Q. Does that Company do a marine insurance business? A. Yes.

(Testimony of Frank G. Taylor.)

Q. Have you, in the course of your business had experience in handling damaged cargoes?

A. I have.

Q. Damaged by sea water? A. I have.

Q. What kind of cargoes?

A. Well, almost all kinds of cargoes.

Q. Did you have anything to do with the consignment of Canton steam silk waste that has been wet on the "Canada Maru"? A. Yes.

Q. Arriving in August, 1918? A. I did.

Q. What did you have to do with that?

A. I represented the Board of Underwriters of New York.

Q. And were you requested by the Board of Underwriters of New York to represent the Underwriters and the owners of this silk?

A. I was requested by the Atlantic Mutual Insurance Company, who are members of the Board of Underwriters of New York, to do that.

Q. To—

A. (Interposing.) To represent the Underwriters and owners in that business.

Q. When did you first see the silk?

A. I went over to Tacoma on the 12th of August, on Monday. [72] The ship, as I recollect, had begun to discharge that morning at eight o'clock.

The COURT.—When was that; what date?

A. (Continuing.) August 12th. I went in to see Mr. Cheney of the Milwaukee Road. I told him

(Testimony of Frank G. Taylor.)

that we were very anxious indeed to have a quick dispatch of this silk and that it was very important that it reached destination as quickly as possible.

The COURT.—Who was it that you told about the quick dispatch?

The WITNESS.—Mr. Cheney of the Milwaukee road.

Q. (Mr. LYETH.) Did you say anything to Mr. Cheney about the necessity of getting the silk forwarded in the wet condition?

A. I did. I told him that it was most important that the silk arrive at destination wet. Shall I go on?

Q. Go ahead.

A. I asked Mr. Cheney if it would be possible to forward the silk by silk train service, and he said that it would. I asked him if it could go in refrigerator-cars and he said that it could. After that we talked generally, possibly, for a few minutes and then Mr. Cheney and I walked down to the end of the wharf. The silk was coming out of the ship at that time and was piled between the two warehouses, between No. 1 and No. 2. By piling, I do not mean to say that one bale was on the top of the other. It was standing on end. We looked over the silk and looked over some of the other cargo that was coming out, and then walked back to the office—to his office. When we got back to his office I asked Mr. Cheney what it would cost to send that

(Testimony of Frank G. Taylor.)

by silk train service, and he told me that it would be \$7.50 per hundred, as against \$1.75 for the bill of lading rate.

Q. \$1.75 had been prepaid?

A. \$1.75, as I understand it, had been prepaid; and I inquired regarding the cost of refrigeration, and he told me that it would [73] cost, approximately, \$21.00 a car—the icing. I discussed with Mr. Cheney the importance of keeping the cargo wet while it was on the wharf and en route, and it was arranged to have a man go there and hose it down, and that was done, and I left Mr. Cheney then and I went back to Seattle.

Q. Did you examine the condition of the silk at that time? A. I did.

Q. What was its condition?

A. Why, it was very dirty. It was covered with beans and other commodities that were in that No. 1 hold. It was warm, but there was nothing to worry about, and I never thought anything about it, and I never mentioned the question of it being warm.

Q. That is, Mr. Cheney did not mention the question?

A. Neither of us mentioned it. I suppose we had both seen a great deal of that kind of cargo and thought nothing of it.

Q. When did you next visit him?

A. I went over to Tacoma on the 14th. I went over there that day to see just how things were

(Testimony of Frank G. Taylor.)

getting along, and everything was all right; progressing. Mr. Cheney told me that the cars had been ordered to be brought in shortly. I went down and looked at the silk with Mr. Cheney, and some of the bales, the heat had gone out of the bales entirely; others were still warm; and I went back to Seattle again.

Q. Then, when did you next—

A. (Interposing.) I went over on the 16th.

Q. What happened then?

A. I went over on the 16th, figuring that I would find the cars loaded and ready to go out. I went and called on Mr. Cheney and was told that Mr. Wilkinson, whom I understood to be the assistant freight agent of the Milwaukee road in Chicago, had been there on the day previous and I don't know whether he stopped the loading of the cars, but he said that they could [74] not go forward.

Mr. KORTE.—You mean the assistant freight agent or the assistant claim agent?

A. The assistant claim agent, yes.

I was very much surprised and expressed myself to Mr. Cheney that way, who told me that he could do nothing, and suggested that I see Mr. Alleman.

Q. Did anyone go over there with you that day from Seattle?

A. Captain Wheeldon, from New York, was with me that day.

(Testimony of Frank G. Taylor.)

Mr. KORTE.—What day was this that the captain was with you?

A. The 16th. I looked at the silk on that day.

Q. (Mr. LYETH.) What was its condition?

A. The condition was—the silk that was on the wharf was practically cool—some bales that showed evidences of heating, but nothing disturbing. The cars—as I remember there was three cars loaded.

Q. Three refrigerator-cars?

A. Three refrigerator-cars on the siding loaded that had just been wetted down. I went over and felt of the bales in the car and they were cool.

Q. What, or approximately what, proportion of the cargo of wet silk had been loaded into the refrigerator-cars?

A. To the best of my recollection, I would say that something over a half.

Q. Well, you say you went to see Mr. Alleman?

A. Yes; I went to see Mr. Alleman and Mr. Alleman told me that the only one that could overrule Mr. Wilkinson was Mr. H. B. Earling, the vice-president of the road in Seattle.

Q. And what did you next do in that connection?

A. I went back to Seattle, or I came back to Seattle and on the 17th I went up to Mr. Earling's office in the White Building. [75] I was told that Mr. Earling was out of town, and was referred to Mr. Barkley, his assistant.

Q. What conversation did you have?

(Testimony of Frank G. Taylor.)

A. I went in to see Mr. Barkley and went over the whole situation with him; telling him how I had gone over to Tacoma—that I was one of the first ones to get there and we had been promised prompt dispatch, and the importance of getting this silk east as promptly as it possibly could get there, and told Mr. Barkley that we would be willing to pay the expenses of one man, or two men, to accompany that shipment east for the purpose of keeping it wetted down, and inspecting it at the stations, if necessary, and for icing, to see that it was properly iced. I told him that we would also be willing to give the railroad company an undertaking to hold it harmless for any further damage that might occur to the silk waste by reason of its having been forwarded in its present condition. Mr. Barkley told me that he would communicate with Mr. Earling. I told him also that if he would telephone over to Tacoma I was very sure that Tacoma would confirm what I said as to the heat diminishing in the bales.

In a few minutes Mr. Barkley left me, excused himself and went out of the office, and I was there at that time, possibly fifteen minutes, when he came back and I asked him if he had telephoned over to Tacoma, and he said that he had and that they confirmed what I said regarding the diminishing of the heat in the bales; and I left Mr. Barkley then, waiting for him to report to me after he had heard from Mr. Earling.

That was on the 17th. On the 19th I called on Mr. Barkley again. He had heard nothing from

(Testimony of Frank G. Taylor.)

Mr. Earling. On the 20th I called on Mr. Barkley—he had heard nothing then.

On the 21st I called on Mr. Barkley, and he told me that [76] the road had decided to forward this freight—to forward the waste; and on the 22d—

Q. (Interposing.) This was the day following?

A. The day following, I went over to Tacoma again and saw Mr. Cheney and arranged for the forwarding of the silk in the manner that we had previously arranged.

Q. Did you see the silk on the 22d?

A. I saw the silk, yes, on the 22d I saw the silk.

Q. How was it with respect to heating?

A. The silk, to the best of my recollection, at that time had been discharged from the refrigerator-cars and was lying on the platforms between the two warehouses. It was the same as it had always been; some of the bales were warm; others cool; some showed some evidences of heating, but there was nothing disturbing about it.

Q. Will you state whether or not in your opinion, this silk showed greater or less evidences of heating than other cargoes that you have had experience with.

Mr. KORTE.—I do not think that any comparison can be drawn by the witness. We do not know what the other cargoes were—if they were silk cargoes, it might be all right, but if they are other materials—

The COURT.—The question is rather general.

Q. (Mr. LYETH.) Would you compare the

(Testimony of Frank G. Taylor.)

heating in this silk waste with other cargoes, specifying the cargoes which you have had experience with?

Mr. KORTE.—I do not think he can draw a comparison; he can state what the condition of this was and of the other cargoes.

The COURT.—Well, he can go on and state as an expert. [77]

A. I have had considerable experience with rice, with beans, with tea and I must say that I have seen anyone of those commodities much warmer than the silk was.

Q. With those commodities have you ever had any apprehension, or ever experienced any apprehension of damage from spontaneous combustion?

A. Not at all.

Q. After the 22d, what next conversation did you have with the officials of the road?

A. On the 23d, the following day, Mr. Barkley telephoned my office that the road had definitely decided not to forward.

Q. Was that the 23d or the 24th?

A. That was the 23d of August.

Q. What did you do; did you go to his office?

A. I went to his office. I was considerably disappointed and I went to his office, and I remember distinctly asking him if he would not take it hot, if he would take it cold and I asked him if the road would accept the shipment cold.

Q. He telephoned you?

A. He telephoned me and I went up to his office.

(Testimony of Frank G. Taylor.)

Q. Immediately? A. Yes.

Q. And then you discussed whether or not they would forward it in its present condition, did you?

A. Well, he told me distinctly that they would not; that they refused to forward it. I then asked him if they would take it frozen.

The COURT.—Take it what?

The WITNESS.—Frozen.

Q. Did you say anything to him with reference to the responsibility of the road for their refusal?

[78] A. I did.

Q. What did he say?

A. I told him that, undoubtedly, this would result in a claim for damages against the road.

Q. Going back to your conversation with Mr. Cheney on the 12th; did you say anything to him about the necessity of keeping the silk wet?

A. I did.

Q. And what the effect would have been if it was allowed to dry out?

A. I do not know what it would have been if it was allowed to dry out; but I was instructed to keep it wet.

Q. Well, then, after your conversation with Mr. Barkley regarding the freezing, what did he say?

A. He said he would look into it and let me know.

Q. Did he subsequently let you know?

A. He did. I think it was the day after he notified me that the road would accept it frozen.

Mr. KORTE.—What was your answer?

(Testimony of Frank G. Taylor.)

The WITNESS.—He said that the road would accept the shipment frozen.

Q. Did you shortly after take steps to try to have it frozen?

A. I did. I went to see Mr. Meyers of the Carstens Packing Company. Mr. Meyers said that he would freeze the silk for us in Seattle, and he subsequently reported to me that the Pure Food people would not allow them to use their meat chambers to freeze the silk.

Q. Then did you make any further efforts?

A. Yes; Mr. Meyers and I discussed the matter, and he said he thought he could get it done in Tacoma, and he finally made arrangements with the Pacific Cold Storage Company in Tacoma to [79] freeze the waste, and on the 29th the waste was loaded into cars.

Q. What kind of cars?

A. Ordinary freight-cars, and taken—switched over to a siding alongside of the Pacific Cold Storage Company.

Q. Did you see it there? A. I saw it there.

Q. Loaded in the freight-cars? A. Yes.

Q. Well, did the Pacific Cold Storage Company freeze it?

A. 27 bales were taken out of one car, when there was some difficulty between Meyers and the Pacific Cold Storage Company as to the price.

Q. Did they refuse to freeze it?

A. I could not say that.

Q. What did you then do?

(Testimony of Frank G. Taylor.)

A. Well, there was nothing left for me to do then but to try to dry it, and I made arrangements with the same man; with this Mr. Meyers, to dry the waste. The cars were then switched over to the Pacific Oil Mills in Seattle.

Q. The same cars? A. The same cars.

Q. Had it been unloaded from the cars?

A. Had it been unloaded?

Q. Yes. A. No; it had not been unloaded.

Q. And what happened in Seattle?

A. Well, the cars arrived in Seattle, to the best of my recollection, on the 2d of September, for we were not allowed to open the cars because of the Customs restrictions—they claimed that we did not have the proper license, and it remained [80] in the cars until the 7th day of September, when the Customs released the cars to us. It was then unloaded and the drying commenced.

Q. So that it was in the ordinary boxcars from the 29th day of August until the—

A. Until the 7th day of September.

Q. Until the 7th day of September? A. Yes.

Q. Will you state what the condition of the weather was during that period?

A. It was the hottest weather that we had had during the season.

Q. How was the silk attempted to be dried?

A. Well, they erected racks made of two-by-fours and opened up the bales and pulled them out and threw it over those racks to dry it.

Q. Outdoors? A. Outdoors.

(Testimony of Frank G. Taylor.)

Q. In the open? A. Yes.

Q. How long did it take to dry the silk?

A. It took from September 7th until January 30th of the next year.

Q. What kind of weather did you have?

A. All kinds; rain, sunshine and fog.

Q. Why did it take so long to dry the silk?

A. Well, we would have one good day with a good breeze and lots of sun, and in the evening the fog would come in and spoil all of the work they had done during the day. Other days it would rain.

Q. So that you would dry it and it would get wet again?

A. We would dry it and it would get wet again.

Q. And then it would dry and it would get wet again? [81] A. Yes.

Q. Under what arrangements with Mr. Meyers was the silk dried?

A. He agreed to dry it for five thousand dollars.

Q. Did you pay Mr. Meyers that sum for drying it out? A. I did.

Q. What was then done with the silk after it was dried? A. Shipped East to destination.

Q. Under the same bills of lading?

A. Under the original bills of lading.

Mr. LYETH.—That is all; you may inquire.

Cross-examination.

Q. (Mr. KORTE.) Mr. Cheney was at the docks; that was his office, was it not? A. Yes.

Q. He was not the General Freight Claim Agent in Tacoma, was he? A. I could not say.

(Testimony of Frank G. Taylor.)

Q. You knew Mr. Alleman, didn't you?

A. I met him that day. I did not know him before.

Q. And he was one with whom you dealt finally with reference to this silk?

A. I had very little dealing with Mr. Alleman.

Q. Did he not tell you who he was?

A. I knew who he was.

Q. What did you think he was? A. The Agent.

Q. Of what? A. The Milwaukee road.

Q. What agency did he have — general agency there, or simply a dock man?

A. Well, I knew him simply as the Agent of the Milwaukee road at Tacoma. [82]

Q. The man having authority to deal with the subject that was before you?

A. I presume that he did.

Q. Now, Mr. Cheney you found at one of the docks?

A. At Milwaukee No. 1, in the office.

Q. That is the dock down at the waterfront?

A. That's right.

Q. You know where the General Offices of the Freight Department are in Tacoma; they are up town, are they not? A. I could not tell you.

Q. Your first talk was with Cheney? A. Yes.

Q. You do not know what position he held, except that you had a talk with him?

A. I talked with Cheney.

Q. You told him you wanted to see the cargo as it came out of the ship? A. I did.

(Testimony of Frank G. Taylor.)

Q. It had not all come out at that time when you were there on the 12th? A. No, sir.

Q. A very small portion of it had only come out?

A. I would say that, possibly, 200 bales.

Q. That would be the top bales? A. Yes.

Q. Just at the hatch? A. Yes.

Q. And as they came out they did not appear to you to be heated very much?

A. Not to disturb them at all.

Q. I am speaking about heating now.

A. No. [83]

Q. They were not heating then very much?

A. Not very much; no.

Q. And in the light of seeing them, then you went to Mr. Cheney and asked that they be sent by fast passenger service?

A. No, I went and saw Mr. Cheney first.

Q. Now, let me get this right. You saw part of this cargo coming out of the hold of the ship?

A. I did.

Q. And it did not appear to you to be heated very much at that time? A. Not at all.

Q. And you then went to Mr. Cheney?

A. No, sir; I went to Mr. Cheney first.

Q. Before you saw the cargo?

A. I went to Mr. Cheney first, and Mr. Cheney and I walked down and saw the cargo together.

Q. You saw it together? A. Yes.

Q. And you looked at what came out at that time, the two of you?

(Testimony of Frank G. Taylor.)

A. We naturally looked at what came out of the boat.

Q. And it did not appear to either one of you that it was heating very much?

A. It never was mentioned between us.

Q. You did not mention anything at all about the heating? A. No, sir.

Q. And so all that appeared to you at that time was that it was saturated and soaked with the sea water on account of the wreck? A. Yes.

Q. And then Mr. Cheney went back to his office, and where did you go? [84]

A. I went back with him.

Q. And then you talked about sending it forward? A. Yes.

Q. And Mr. Cheney then told you, without any further knowledge of the cargo, right then and there, that he would have it sent through fast passenger service in refrigerator-cars?

A. Mr. Cheney told me that in the first place.

Q. Before you went down?

A. Before I went down.

Q. What were you talking about when you came back to the dock?

A. On my coming back in the dock with Mr. Cheney, I suppose we shook hands and I went home.

Q. Now, when you speak of refrigerator-cars, and sending it forward on refrigerator-cars, of course it would be on ice with the vents open?

A. In ice.

(Testimony of Frank G. Taylor.)

Q. Did he say iced? A. Yes.

Q. Iced?

A. Yes. We were to pay \$21.00 a car for icing.

Q. You ice silk in its normal condition?

A. No.

Q. Then why would you call for icing when there was nothing alarming about the silk at the time that you asked that it go in fast passenger service?

A. In order to keep it as wet as possible and cool as possible.

Q. To keep it as cold as possible? A. Yes.

Q. Will you tell the Court how you could wet it down in the refrigerator-car?

A. I suppose you could open it up the same as you would when you [85] were loading it.

Q. Squirt water in it?

A. I suppose so, of course.

Q. And that is the kind of wetting that you wanted done?

A. That is the kind of wetting that I wanted done.

Q. Merely sprinkling the inside as best you could?

A. Turn the hose on the silk in the car and wet it down, the same as was done over at the dock.

Q. Sprinkle it on the top?

A. I don't know whether it was sprinkled on top.

Q. Naturally you could not get the water inside between the bales?

A. Yes; because we arranged to build up those bales so that there would be a space between the bales to allow the water and the air to circulate.

(Testimony of Frank G. Taylor.)

Q. In the cars? A. Yes.

Q. How many cars would it take to do all that—to ship that silk in the manner which you have in mind, as against the ordinary manner that it would go?

A. I think, to the best of my recollection, I think we figured on five cars.

Q. Five cars—and ordinarily there would be only about four cars of silk?

A. Depending on the size of the cars.

Q. Well, take your ordinary car that is used, which you use, or which you say you are acquainted with that is for the shipping of silk—in which silk is shipped, there would be but four carloads of silk—the bales could have been carried in four cars? A. The 867 bales.

Q. There was 133 went forward untouched? [86]

A. Yes.

Q. Well, the 867 bales, four cars would contain them all?

A. Four cars would contain them all.

Q. And it would take five cars if you wanted them placed so that you could leave places in between and build them up so that one would not touch the other? A. I would say so.

Q. Is that the way you wanted it done?

A. Yes, to put pieces of boards in between the bales.

Q. That would require a special service for the carrying of this cargo?

A. Well, we agreed to pay for that special service.

(Testimony of Frank G. Taylor.)

Q. And you would have to pay for that special service? A. We would.

Q. And it would be considerable, in the way of piling those bales in the car as you wanted them—it would cost considerable to load that car that way as against the ordinary car?

A. I presume that it would cost more.

Q. Then you would have to have men go along to sprinkle those cars while en route, would you not? A. We agreed to pay for that.

Q. Whether you agreed to pay it or not, that would have to be done, would it not? A. Yes.

Q. That was also a special service, for which you would have to pay specially, would you not?

A. Yes.

Q. And then you asked that it go in the fast train service? A. Yes.

Q. You say that Cheney was the one who said that it would go in that service? A. He did.

[87]

Q. But not Alleman?

A. I never discussed it with Alleman.

Q. Or with Wilkinson?

A. I never saw Wilkinson.

Q. That was the man that was there from Chicago? A. I never saw him.

Q. You never talked to him at all?

A. I never talked to him at all.

Q. Why did you want it wetted down?

A. Because I was instructed by my people to keep the bales wet.

(Testimony of Frank G. Taylor.)

Q. Well, what was your own judgment on it; having seen it?

A. My own judgment was that, from the little experience that I had with silk, that if it was once wet that it must be kept wet until it was handled.

Q. Was there any particular reason for keeping it wet? A. I think there is.

Q. What is the reason?

A. The reason is that it keeps the gum on the silk.

Q. That is it? A. The natural gum.

Q. So that was the purpose of wetting, if it was wet, was to keep the natural gum on the silk?

A. If the gum goes off the silk, I understand that silk is badly damaged.

Q. Is it not a fact, if you know anything about silk culture at all, that the way they degum it is by saturating it in water and keeping it there?

A. I don't know that.

Q. Then you are ignorant of that part of the matter, and you knew nothing about what the action of the water was, except you thought it would keep the gum on the fiber? [88]

A. That is right.

Q. You did not have it in mind at all that the wetting down was to keep it from heating?

A. It would naturally keep it cool.

Q. Was not that the purpose of your putting water on it? A. No, not at all.

Q. —in your mind?

A. No, that is not it at all.

(Testimony of Frank G. Taylor.)

Q. It was not in your mind then that the wetting was to keep it cool?

A. Wetting would keep it cool, naturally.

Q. You would want those bales piled one on the top of the other, with pieces between so that you could get circulation?

A. To keep it cool, and to keep it wet.

Q. Then it was heating, if it had to be kept cool?

A. I don't know that it was heating; I know that it was hot.

Q. You know it was hot?

A. I know it was hot.

Q. And it was heating more the second time than the first time?

A. No, it was less the second time than the first time.

Q. Did you examine it critically?

A. I put my hands on it.

Q. Where?

A. Out on the wharf and in the cars.

Q. Where on the bales did you put your hand?

A. Do you want to know?

Q. In between, or on top?

A. I put it on the top and in between; and we pulled open some bales and took it down as far as we could, Captain Wheeldon and myself, and it was cool.

Q. The bales inside were cool. [89]

A. Yes, sir, as far as we got down it was cool.

Q. Were you there when those three cars which

(Testimony of Frank G. Taylor.)

you mentioned—there were really only two—were you there when those cars were unloaded?

A. I was not.

Q. Did you see the two or three cars loaded?

A. Well, they were being loaded.

Q. After they were loaded? A. I did.

Q. Did you see the doors closed on them?

A. I did not.

Q. When was it that you saw them—what day was it? A. I saw them on the 17th.

Q. That was the first time then that you saw those cars?

A. That was the first time I saw those cars—those refrigerator-cars.

Q. You say they were loaded then?

A. They were loaded then.

Q. Well, of course, you might be mistaken as to the date? A. I meant on the 16th.

Q. They unloaded them on the 16th?

A. It was the 16th I was over there.

Q. And when you were over there, were the two, or the three, refrigerator-cars, loaded or unloaded?

A. They were loaded.

Q. Were the doors closed when you saw them?

A. The door was open.

Q. They had opened the doors?

A. The door was open, and they had just been wetted down—the car I saw open was wetted down.

Q. They were wetting them down to keep them cool? A. Partly. [90]

Q. Apparently they had grown hot?

(Testimony of Frank G. Taylor.)

A. Well, all that kind of stuff will get warm.

Q. Now, let us talk about degrees of warmth; there is warm and warmer; would not they get warmer and would not the heat increase as the time goes on? A. No.

Q. Do you think bacterial action goes downhill instead of uphill? A. I know it will.

Q. —when heat and moisture co-operate?

A. Yes.

Q. Then, you talked again to Cheney when the cars were standing there with the doors open; and how long did you remain there on the 16th; that is when you were there with Captain Wheeldon?

Mr. LYETH.—He did not say that he talked to Mr. Cheney when the doors were open.

Mr. KORTE.—Well, when was your next talk with Mr Cheney—I think you said you were there on the 12th, the 14th and the 16th with Captain Wheeldon? A. Yes.

Q. Did you have any talk with anyone at that time?

A. It was on the 16th that Mr. Cheney told me about Mr. Wilkinson being there on the day previous.

Q. Now, I will go over that again—you said you were there on the 12th and then you went back to Tacoma on the 14th? A. That's right.

Q. And then again on the 16th? A. Yes.

Q. At that time you were there with Captain Wheeldon, did you have any talk with anyone there on the 16th as to what was being done with

(Testimony of Frank G. Taylor.)

the shipments of the silk, Mr. Taylor, either the 16th or the 17th? [91]

A. It was the 16th—that was the 16th.

Q. That was when you found the refrigerator-cars loaded and the doors open; did you have any talk with anyone there at that time?

A. That was the time that Mr. Cheney had told me that Mr. Wilkinson had been there.

Q. Mr. Wilkinson had been there, and what happened?

A. And that he had refused to allow it to go forward.

Q. Did he say why?

A. Because he was afraid it would set fire to the train.

Q. Did he discuss it with you at that time, and is it not a fact that he went over it with you, that it was heating to the extent that it looked to them that it was going to burn.

A. I do not remember that he did at all.

Q. Anyway, he did mention to you that the reason why they would not take it on was because—

A. (Interposing.) He told me—

Q. (Continuing.) —because of the heating and that it looked like there would be spontaneous combustion?

A. He told me distinctly that Mr. Wilkinson had claimed that the waste was in such condition that if shipped it would be likely to set fire to the train.

Q. And, naturally, you discussed why he thought that? A. Yes, undoubtedly we did.

(Testimony of Frank G. Taylor.)

Q. And that he evidently said to you that it was heating and hot and fuming and smoking?

A. No; he never said anything to me about smoking.

Q. Did you examine into it as to what it was doing?

A. I went down and looked at it.

Q. At the cars? A. At the cars. [92]

Q. And they were then sprinkling it down with water?

A. No; it had just been sprinkled, and I went over and put my hand on the bales, and they were cool.

Q. That is, you reached into the car?

A. I reached into the car; there was one car, as I remember, that the door was open.

Q. And did you notice the other car with the door closed, as to whether it was smoking through the vents of the car? A. No, I did not.

Q. You did not notice that condition? A. No.

Q. Then you went over to see Mr. Barkley, after the 16th? A. On the 17th.

Q. And you had a talk with him about it and you told him why they would not carry the cargo forward, did you?

A. I told him just what Mr. Cheney had told me that Mr. Wilkinson said.

Q. And you told him the reason why?

A. I did.

Q. That it would be apt to heat too hot and burn up? A. —and set fire to the train.

(Testimony of Frank G. Taylor.)

Q. And then you suggested to him that it be cooled and this special service be rendered?

A. I did not suggest to Barkley—that was all arranged with Mr. Cheney.

Q. What did you suggest to Barkley?

A. I simply told him what the arrangement I had with Mr. Cheney was.

Q. About shipping it in the special service?

A. Special silk train service and in refrigerator-cars. I told him that we would be willing to pay the expenses of one or two men. [93]

Q. Whatever special trouble they would have to go to in forwarding it in the silk train? A Yes.

Q. You appreciated it could not be forwarded except to give that special service?

A. I did not.

Q. Why did you ask for it then and were willing to pay it?

A. Because that was the suggestion that was made to me from the east, to keep it wet all of the way along.

Q. I say, in connection with that, you appreciated that it would cost more to send it through wet than if it had been dry? A. I did, surely.

Q. Than if it had arrived there dry and went through on the original bill of lading? A. Yes.

Q. And then did not Mr. Barkley inform you at that time in relation to this special service that he had counselled with the Legal Department and they told him that it would be unlawful under the Federal Act to give you that service?

(Testimony of Frank G. Taylor.)

A. He did not.

Q. After you had the talk with Mr. Barkley and it developed that a man should be sent to examine it, someone who had experience in cargoes, you suggested that he look into it and see whether it was fit for shipment—that was the talk you had with him?

A. I told Mr. Barkley that we would be very glad indeed to pay the cost of inspection of that waste in its present condition by someone competent to judge silk.

Q. You left it to him then to go ahead and arrange for it?

A. That was all that was said. There was no arrangement made.

Q. Well, what was the purpose of your statement to him? [94] A. Just a statement.

Q. You knew that he went out and arranged with Balfour-Guthrie's man? A. I was not notified.

Q. Were you not notified afterwards?

A. I never knew of it afterwards until I got the bill for \$55.

Q. And you paid the bill?

A. I paid the bill—under protest though.

Q. After that occurred, when you had the conversation with Mr. Barkley about having the cargo surveyor, or someone of experience, examine into the condition of the cargo, to see whether it was fit for shipment and would go without burning up the train, you went away, did you, then from Mr.

(Testimony of Frank G. Taylor.)

Barkley, or did you still linger there and have a further conversation?

A. No. I went away. He was to consult with Mr. Earling.

Q. And finally he had gotten the report from Mr. Ayton, and he sent you that report?

A. No; the report came to me.

Q. Direct from Balfour-Guthrie—well, that is immaterial, but you did get Mr. Ayton's report?

A. In time; I would say it was considerably after he had declined to take the shipment.

Q. That this report came in? A. Yes.

Q. And you received it? A. Yes.

Q. Then when it was finally refused by Tacoma you said the only thing you could do was to take the cargo back? A. No, I did not say that.

Q. Well, you took the cargo then from the possession of the railroad? [95] A. I never did.

Q. Well, how did you get it over to the Pacific Oil Mill Company?

A. I asked the railroad to send it over there.

Q. Anyway, you directed the Railroad Company to ship this cargo first to the Pacific Cold Storage Company in Tacoma—is that the name?

A. Yes, the Pacific Cold Storage Company.

Q. And they opened the cars at that time and took out some bales—27 of them?

A. That's right.

Q. No attempt was made at refrigeration?

A. I think some twenty bales were put into the cooling chamber.

(Testimony of Frank G. Taylor.)

Q. They refused anyway to freeze it because it would contaminate the meat cells into which they were put? A. No.

Q. What concern was it that refused on that account?

A. It was the Carstens Brothers in Seattle. They did not refuse it, but the Pure Food people stepped in.

Q. You would imagine that the Pure Food people did not step in because it was wholesome, do you?

A. I did not testify that stuff was wholesome.

Q. It was smelling pretty badly at that time?

A. Well, it was no geranium.

Q. You could not get your nose into the car and keep it there very long?

A. Well, I would not want to.

Q. It smelt worse than any privy you can imagine? A. No.

Q. Ammoniacal fumes were coming off, like from a manure pile?

A. I got no ammonia fumes at all. [96]

Q. You did not?

A. —until the stuff was brought over to the Pacific Oil Company.

Q. And you got it then?

A. I got some ammonia, certainly.

Q. And a great quantity of it?

A. I did not see it when it was opened up. I saw it after it was hanging out, but there was a smell of ammonia all right.

Q. Were you there when they first opened up the

(Testimony of Frank G. Taylor.)

cars, when they got to the Pacific Oil Company's place? A. No, sir.

Q. You know that Mr. Meyers of the Pacific Oil Company—I am speaking of him—brought men down there to unload those cars and they refused to work for him—you know that fact?

A. I don't know that fact.

Q. You do not know of that fact?

A. I know that he had difficulty in getting labor.

Q. To unload it?

A. I think it was more due to the war conditions than anything else.

Mr. KORTE.—I move to strike out his conclusions, unless he knows.

A. Well, I don't know.

Mr. LYETH.—This is Mr. Korte's witness.

The COURT.—He is stating his conclusion.

Q. (Mr. KORTE.) And then you say that you contracted with Mr. Meyers to dry this for five thousand dollars? A. That is right.

Q. Will you itemize that account—as to why it cost five thousand dollars to dry that stuff?

A. Well, I do not know why it cost five thousand dollars, but I submitted the offer to dry it for five thousand dollars to my people, and they agreed to it. [97]

Q. Did Mr. Meyers submit to you the things he would have to do in order to dry it? A. Yes.

Q. Can you give me some of the items of the cost of the five thousand dollars that he submitted to you?

(Testimony of Frank G. Taylor.)

A. I imagine the principal item was the labor.

Q. Why would it cost so much?

A. Because it was a poor time of the year to try to dry anything, and it would take a long time to dry that stuff in the open.

Q. It was not eventually all dried in the open?

A. There was very little dried inside. They put some steam pipes into a little building—they found they were not making any headway at all in the open on account of the weather and one day he suggested to me that he put some steam pipes into a small brick building he had over there, and he put some of the stuff in there and dried some of the stuff in there.

Q. And it dried more quickly and readily than in the open? A. No, it did not.

Q. You think, don't you, that artificial heat would dry more rapidly inside than if it was outside, under the present condition of the weather?

A. Well, any time he dried it outside it dried more rapidly, but the trouble was that when night came we had either the fogs or the rain.

Q. Would you not think that when it was inside with artificial heat that it should get the moisture out?

A. You would not have the fog and the rain, but you would not get the wind and the sun.

Q. Would not the steam and the heat itself take the moisture out? A. Not at all.

Q. According to your opinion then, artificial heat will not absorb [98] moisture?

(Testimony of Frank G. Taylor.)

A. I don't say that at all.

Q. How do they dry shingles?

A. In a dry kiln.

Q. And what is it that they dry out?

A. They dry the moisture out.

Q. They dry it out of the shingles? A. Yes.

Q. Now, if you put one of these bales of silk into a dry kiln it would dry the moisture out?

A. I suppose it would, but it would kill the silk.

Q. Now, answer my question.

A. Of course it would.

Q. And you could have taken this entire cargo and have taken it out here to the dry kilns in Ballard and run two of them and put the entire amount in there and dry it out?

A. I would not think of doing such a foolish thing as that.

Q. You think that that is foolish? A. Yes.

Q. And yet steam or artificial heat will take out moisture? A. Yes.

Q. So you think the other thing was not foolish, drying it out until it was destroyed?

A. I think that was the only way it could be dried.

Q. Who told you to dry it out—the men from the East? A. I got authority to dry it out.

Q. From whom?

A. From the people I represented.

Q. They thought that was the best thing to do?

A. That was the only thing we could do at that

(Testimony of Frank G. Taylor.)

time, on account of your refusing to carry it forward. [99]

Q. Anyway, you started to dry it? A. Yes.

Q. And you were told to dry it by the people in the east?

A. I was authorized to dry it after it was reported to them that that was all I could do.

Q. And, of course, they should have known what would happen when it was dried?

A. I imagine that they must have.

Q. And they must have known if it was dried that it would injure the fiber?

A. I can't tell you that.

Q. But that is your claim, that it did injure the fiber, or didn't you testify to that?

A. I didn't testify about that.

Q. You do not know what the drying had to do with the fiber? A. No, sir.

Q. And you cannot give me any of the items that go to make up this five thousand dollars for drying?

A. Well, there was considerable lumber. There was a setting up of the racks. There was the breaking up of those bales of silk and hanging it on those racks.

Q. Did Mr. Meyers give you an estimate in advance of about what would go to make up the five thousand dollars? A. He did not.

Q. Before you allowed it? A. He did not.

Q. But merely right off the reel he said, "I will take five thousand dollars to dry them?"

A. Yes.

(Testimony of Frank G. Taylor.)

Q. And you submitted it to your people and they said, "All right?"

A. Well, I suppose they figured it on the price per bale. [100]

Mr. KORTE.—I object to what you suppose, and I move to strike out that answer as a voluntary statement. That is all.

Redirect Examination.

Q. (Mr. LYETH.) Did you make a contract with Mr. Meyers?

A. I did.

Q. Is that the contract? (Showing.)

A. That is it.

Mr. LYETH.—I offer that in evidence.

Mr. KORTE.—Let me see it, please.

(Document received in evidence and marked "Plaintiff's Exhibit No. 1-A.")

Said original exhibit is, by order of the Court, transmitted to the Circuit Court of Appeals, together with all of the original exhibits received in evidence.

Q. Mr. Korte asked you about the special man going forward with the silk; was that mentioned at your first conversation with Mr. Cheney, or was it later?

A. I would say not. I would say that was my second or third conversation with him.

Q. Did you speak about that to Mr. Barkley?

A. I offered to pay the expenses of one or two men to accompany the train to destination.

(Testimony of Frank G. Taylor.)

Q. Was that when you saw Mr. Barkley on the 17th? A. On the 17th.

Q. Was anything said prior to that time about your sending forward a man to ice and water the silk? A. Not that I remember.

Q. Who was Captain Wheeldon? [101]

A. Captain Wheeldon is a surveyor from New York.

Q. What interest did he represent?

A. He represented a cargo interest on the "Canada Maru."

Q. Did he represent any of the raw silk?

A. I think he did.

Q. Did he discuss with you the best method of handling the silk? A. He did.

Q. And what was the result of that discussion?

Mr. KORTE.—I object to that as self-serving.

The COURT.—Who is Captain Wheeldon—he was not a representative of the defendant company?

Mr. LYETH.—No.

The COURT.—I do not think it is competent then.

Q. (Mr. LYETH.) Was he representing other cargoes than the cargo that is represented in this suit? A. Yes.

Mr. LYETH.—If your Honor please, he was not representing our interest.

Mr. KORTE.—Nor the defendant's.

The COURT.—I understand that.

Mr. LYETH.—Do you sustain the objection.

(Testimony of Frank G. Taylor.)

The COURT.—I do not understand the theory upon which you offer his declarations or statements. Captain Wheeldon was not representing either of the parties in this litigation, was he?

Mr. LYETH.—No, sir, it was simply to show where Mr. Taylor got the idea of forwarding the silk wet. Mr. Korte is trying to show that Mr. Taylor wanted this forwarded wet so as to keep it from taking fire.

Mr. KORTE.—I think he said his people ordered him to send it on wet. [102]

The COURT.—Well, the witness can state how it came that he got the idea, or how he came to suggest sending it on wet.

A. My reason for asking to have it forwarded wet and to keep it wet, was by reason of a telegram that I got from my people in New York, asking me to keep it wet, and it was Captain Wheeldon who suggested that it be forwarded in the refrigerator-cars and iced.

Q. (Mr. LYETH.) Did you notice any smell of ammonia coming from the bales when they were on the dock? A. I did not.

Q. Now, Mr. Taylor, will you just relate how the question of having some competent surveyor or competent man experienced in silk, look at the cargo, came up in your conversation with Mr. Barkley? A. Why, I brought it up myself.

Q. Was this after they had refused to forward it?

A. This was after Mr. Wilkinson had refused to forward it, and I was talking with Mr. Barkley on

(Testimony of Frank G. Taylor.)

the 17th and I brought it up myself. I told him that we would be very glad indeed to pay the cost of inspection by some competent party; someone familiar with silk who would go over to Tacoma and look at that silk and report to him. I made that statement. He made no reply to me. I never even knew who was going to go, or that he thought of getting anybody. I simply made that statement to him.

Q. Did you ever hear of Mr. Ayton in connection with this case?

A. I never heard of him at all until I saw the bill.

Q. And do you remember, approximately, what date you received that bill?

A. No, I do not. [103]

Q. Would it refresh your memory if you saw a letter? (Showing.)

A. I think it would. (Examines letter.) I can only believe that was the day that I got it.

Q. What date? A. September 20th.

Q. You never heard of Ayton looking at this?

A. I never knew anything about it at all.

Q. —until you received the bill?

A. Not until that, not at all.

Q. And that was about September 20th?

A. September 20th.

Q. In asking for this, and arranging for this special service of silk train service and refrigerator-cars and icing; did you have in mind any danger of the silk taking fire?

(Testimony of Frank G. Taylor.)

A. I did not. It never occurred to me.

Q. Mr. Taylor, how long have you been handling damaged cargoes coming into port?

A. About thirty years.

Q. Approximately, how many damaged wet cargoes have you handled?

A. It is pretty hard to say, but I suppose five hundred—those are shipments and not cargoes.

Q. Will you state whether or not every commodity, of vegetable or of animal origin, heats when it is wet?

Mr. KORTE.—I object. The witness is incompetent. I do not think he has demonstrated that he is acquainted with that feature of the case.

The COURT.—He may answer.

A. My experience with wet cargoes has been more particularly with beans, rice, tea, burlap; and all those commodities heat. I have had beans and rice so hot that you could not put your hand on the bag, and it was a matter that would not even be [104] discussed between myself and the parties that, possibly, I was selling the stuff to—the thought of its catching fire or setting fire to a wharf, or burning.

Q. Did you have them in fireproof warehouses?

A. No.

Q. Wooden warehouses?

A. Wooden warehouses.

Q. Did any of them ever catch fire?

A. Not that I know of.

Q. Does rice get hot? A. Very hot.

(Testimony of Frank G. Taylor.)

Q. Did you observe that the silk got as hot as rice would get?

A. No; I have seen rice get much warmer than any time that I saw this silk.

Q. The various times that you saw this silk, when did it reach the highest temperature in your estimation, while it was on the dock?

A. The second day that I was over there, that was on the 14th, the bales were exposed to the sun and they were warm; some were warmer than others, but there was absolutely nothing, in my opinion, to be disturbed about. It never occurred to me that they could catch fire or that there was any danger from them.

Q. Well, at the times that you saw it after the 14th, was it hotter or colder?

A. It was cooler. At the time I saw them after the 14th was on the 16th, and that was after the men had been wetting them down in the car, and those in the car were cool. [105]

Recross-examination.

Q. (Mr. KORTE.) Then it seems that if he did not wet them they would keep on heating?

A. No, sir.

Q. Then what was the purpose of keeping them constantly wet?

A. To keep the bales wet according to instructions from the people who owned the silk.

Q. So that is all you know about the effect of the wetting—now, with reference to these bags of beans

(Testimony of Frank G. Taylor.)

and rice and burlap; how large a shipment did you have in mind that was wet?

A. There have been a great many shipments—a great many hundreds of tons.

Q. Were they wet in the hatches, due to the ship going on the rocks and staving a hole in and letting the water in, like in this case?

A. In some cases the holds were submerged and in the other cases it was salt water that came through the hatches or leaked into the ship.

Q. And what was done with the beans and rice and burlap?

A. They were put into the warehouse and the damaged portion put to one side and the sound portion put to another side.

Q. That was practically in the open?

A. In big warehouses.

Q. With free ventilation?

A. A good deal of ventilation, yes.

Q. Plenty of ventilation for any of the gases or fumes to escape, or the heat that might escape from them; it would draw it off immediately?

A. Yes.

Q. They are the warehouses you have in mind, where there was plenty of ventilation that would draw off any heat or gases [106] or fumes?

A. They were well ventilated warehouses, no doubt of that. The rice was never wetted down.

Mr. KORTE.—That is all.

Mr. LYETH.—There is one question I forgot to ask.

(Testimony of Frank G. Taylor.)

Q. There was 1000 bales in this shipment?

A. A thousand bales in the entire shipment.

Q. And do you know whether or not there were two grades of the silk?

A. I believe there was No. 1 and No. 2.

Mr. KORTE.—I think we can agree on that. That is all agreed to. There is no dispute about that.

And to further prove the issue on the part of plaintiff, the four bills of lading referred to in the pleadings were received in evidence and marked respectively "Plaintiff's Exhibits 2-A, 3-A, 4-A and 5-A," and said original exhibits are transmitted to the Circuit Court of Appeals with all the other exhibits in the case.

And to further prove the issue on the plaintiff's part, the plaintiff offered in evidence a bottle labelled "No. 1 Canton Silk Waste," which was received in evidence and marked "Plaintiff's Exhibit No. 2," and the same is transmitted to the Circuit Court of Appeals with all the other exhibits in the case.

And thereupon the plaintiff introduced and read the following deposition of EDGAR W. LOWNES:
[107]

Deposition of Edgar W. Lownes, for Plaintiff.

EDGAR W. LOWNES, being duly sworn and examined as a witness for the plaintiff, testified as follows:

1 Q. (By Mr. LYETH.) Mr. Lownes, are you

(Deposition of Edgar W. Lownes.)

the president of the American Silk Spinning Company, the plaintiff in this action? A. I am.

2 Q. How long have you been president, approximately? A. Approximately ten years.

3 Q. Were you before that time engaged in the spun silk business? A. I have been.

4 Q. For how long? A. Thirty-one years.

5 Q. That has been your only business practically?

A. Well, several years I was in the dress-goods business.

6 Q. And for the past thirty-one years you have been continuously in spun silk? A. Yes.

7 Q. And during that time you have handled Canton steam waste, what is known as the grades of number one and number two?

A. Almost continuous.

8 Q. The plaintiff company has manufactured that commodity into finished products practically continuously?

A. No. Only been in existence about eleven years, ten or eleven years. Since that time.

9 Q. What commodity do you use, what raw commodity? A. Principally Canton.

10 Q. Steam waste? A. Steam waste.

11 Q. And you have been using that for the past eleven years with this company?

A. Yes. [108]

12 Q. Do you remember a consignment of one thousand bales of Canton steam silk waste which were shipped on board the steamship "Canada

(Deposition of Edgar W. Lownes.)

Maru'' and consigned to the following bankers, Goldman, Sachs and Company and Heidelbach, Ickelheimer and Company?

A. Yes, I remember it.

13 Q. Did you actually pay for that silk and were the bills of lading endorsed to the American Silk Spinning Company? A. Yes.

14 Q. I show you copies of bills of lading covering those shipments. Do they correspond to the description of the shipments as you remember them? A. As I remember them, yes.

15 Q. Out of this shipment of a thousand bales how many bales arrived in a damaged condition?

A. 867.

16 Q. And the balance came forward sound?

A. Yes.

17 Q. Did you see the damaged silk when it arrived here in January, 1919?

A. I saw the damaged silk when it arrived. I don't remember the date of arrival.

18 Q. Will you describe the condition of the silk, the damaged silk?

A. The silk was wet and discolored.

19 Q. Had it been partially dried?

A. Partially dried; yes.

20 Q. Will you state the effect of the drying of the silk on the fiber?

A. I don't know what you mean.

21 Q. What was the condition of the silk with respect to the strength of its fiber?

(Deposition of Edgar W. Lownes.)

A. The fiber had become very much weakened.
[109]

22 Q. Out of the 867 bales damaged how many bales were there of the number one Canton steam waste? A. 500 bales number one.

23 Q. And how many of number two?

A. 368 number two.

24 Q. Were you able to utilize the damaged silk in your factory? A. No.

25 Q. And what was done with it?

A. It was shipped to New York, I believe, after being held here for a while.

26 Q. Will you state, Mr. Lownes, from your experience in handling Canton steam waste whether or not in your opinion there is any danger whatsoever from spontaneous combustion when the silk is wet by salt water?

A. No, there is absolutely no danger.

27 Q. Have you had any experience with silk waste which had become wet?

A. Yes, a great deal of experience.

28 Q. Will you state what your experiences have been?

A. I have seen it wet by flood, by bursting steam-pipe, by salt water and by rain-water.

29 Q. How long has it been wet in these various cases, approximately?

A. In some cases for months; others for hours.

30 Q. In any of these cases did the silk waste take fire? A. No.

31 Q. Have you ever had foreign substances take

(Deposition of Edgar W. Lownes.)

fire in silk waste? A. Yes.

32 Q. And what has happened?

A. The foreign substance consumed itself and charred the surrounding waste.

33 Q. Did the fire go out? A. Yes. [110]

34 Q. Did the silk burn? A. Charred.

35 Q. Charred. Can you set fire to it?

A. You can char it. There is no actual combustion.

36 Q. You spoke about some pipes bursting. In the instance you have in mind did the silk waste remain against the hot steam-pipe, the wet silk waste? A. No.

37 Q. How long did the silk remain wet when the steam-pipe burst?

A. We can't tell exactly but we believe it was damaged for months.

38 Q. Was that in this factory? A. Yes.

39 Q. Was there any spontaneous combustion?

A. No.

40 Q. Was the silk packed against the steam-pipes? A. No.

41 Q. Immediately below it?

A. They were below it. The steam-pipes leaked and the water ran along the ground and wet the silk.

42 Q. That was hot water, was it? A. Yes.

43 Q. Have you had consignments of silk waste prior to the waste that is the subject of this suit coming from the Pacific Coast damaged by salt water? A. Yes.

(Deposition of Edgar W. Lownes.)

44 Q. Has there been any evidence of combustion? A. No.

45 Q. Have you ever heard of silk waste, Canton steam silk waste, igniting by spontaneous combustion? A. Not of itself, no. [111]

46 Q. Will you explain what you mean by "not of itself"?

A. I have seen foreign matter take fire and char the waste.

47 Q. You mean by "foreign matter" foreign substances? A. Cotton.

48 Q. What happens when this Canton steam waste becomes wet with either fresh or salt water?

A. It ferments and gets a little warm, gets a strong ammonia smell.

49 Q. Well, does it get very hot?

A. Never felt it very hot, no.

50 Q. Well, can you describe in any way how hot or how warm it does get?

A. Well, considerably less than 140. You can bear your hand in it, you can take hold of it without scalding yourself or burning yourself, without feeling any discomfort.

51 Q. Referring to the shipment of silk on a previous occasion which came forward wet with salt water from the Pacific Coast, will you state whether or not the silk was warm? A. It was.

52 Q. Was it hot? A. No.

53 Q. Had fermentation taken place? A. Yes.

54 Q. Referring to the shipment of silk waste from the steamer "Canada Maru," assume, Mr.

(Deposition of Edgar W. Lownes.)

Lownes, that the vessel stranded on or about August 1st and that the hold became flooded with salt water in which the silk waste was stored and that the silk was thereafter unloaded on a wharf between August 7th and 10th, 1918, and further assume that the defendant railroad company had forwarded the wet silk by silk train service and that it had been wet by hose on the wharf from time to time and had arrived at your factory between August 21st and [112] August 30th, some three or four weeks after the original wetting. Will you state from your experience what percentage of damage to the silk waste you would have experienced in putting it through your factory?

A. Five to ten per cent, plus cost of handling.

55 Q. Well, what would the cost of handling be?

A. A nominal amount compared to the value of the waste.

56 Q. And what would that have consisted of?

A. Boiling extra time and sorting the waste.

57 Q. Will you state whether or not the fiber of the silk, assuming those circumstances, that it had been wet from three to four weeks and kept wet, would have been affected to any material extent?

A. Possibly five per cent, if handled promptly.

58 Q. What would have necessitated the extra boiling that you refer to?

A. The eliminating or reducing the amount of salt water, and to help cleanse the stuff.

59 Q. Will you state briefly, Mr. Lownes, what

(Deposition of Edgar W. Lownes.)

the process of degumming silk waste is that you use?

A. The process we use is to boil it with soap and chemicals. The salt water being in the waste would prevent the soap from saponifying.

60 Q. Is there any other method of degumming waste used in foreign countries?

A. Yes, methods of maceration.

61 Q. And what is that?

A. That is to allow the silk to ferment—the gum in the silk to ferment and after fermentation it becomes easily washed off.

62 Q. But to bring about that fermentation what do they do with it?

A. They allow it to remain in lukewarm water.
[113]

63 Q. State whether or not that would have been the process that would have gone forward if the silk had been forwarded as I have indicated in the hypothetical question.

A. To a large extent; yes.

64 Q. Do I understand you to mean that, if the silk had been kept wet, the fermentation process would have been going on?

A. If it had been continually wet it would have retarded fermentation, although it would have gone on to a slight extent.

65 Q. What would the effect of the fermentation that did go on have been?

A. It would have discolored the fibers to a certain extent, if not damaged it materially.

(Deposition of Edgar W. Lownes.)

66 Q. Would the fermentation attack the animal matter, the gum? A. It would.

67 Q. Will you state, Mr. Lownes, the percentage, including cost of handling, of damage to the sound silk that would have resulted if the silk had been forwarded by the defendant company as I have indicated in my hypothetical question?

A. Not to exceed five or ten per cent.

68 Q. Including the cost of handling?

A. Including the cost of handling.

69 Q. What was the sound market value of the number one and number two Canton silk which was damaged at the time in August 1918?

A. In total dollars and cents?

70 Q. Well, make it how much a pound.

A. The market value—I can give you in percentage above what it would cost what was at that time the market value.

71 Q. I mean in dollars and cents.

A. The number one was five shillings eight pence per pound. The value of that shipment at the time was \$125,653.78. [114] That was five shillings six pence at the time, and the other, number two, was three shilling two pence.

72 Q. Have you that in dollars and cents?

A. Yes, I can give you the total dollars and cents in each of them. Number one was \$70,502.

73 Q. And how many pounds?

A. 46,613 pounds. \$1.51 for the number one and 87¢ for the number two.

74 Q. Then do I understand, Mr. Lownes, your

(Deposition of Edgar W. Lownes.)

opinion as to the value of that wet silk was ten per cent less than the market value? A. Yes.

75 Q. In August 1918? A. Yes.

76 Q. And what would the value in figures of the wet silk have been? A. \$113,088.40.

77 Q. Mr. Lownes, I show you a bottle containing silk waste which Mr. R. W. Hook will testify he wet with sea water and allowed to stand in an air-tight bottle from September 24th, 1920, until yesterday, January 2d. Will you examine that silk and state whether or not in your opinion the fibre is materially weakened?

A. No, it is not. The fiber is very little affected.

Mr. LYETH.—I offer this sample in evidence.

Sample marked "Plaintiff's Exhibit 2, January 2, 1921." Exhibit withdrawn by Mr. Lyeth.

Cross-examination by Mr. KORTE.

78 Q. This shipment moved on bills of lading with a draft attached?

A. No, no draft attached.

79 Q. It was an order bill of lading?

A. Letter of credit. [115]

80 Q. Well, whatever it was, it had to be taken up somewhere?

A. The payment had been taken up.

81 Q. And the letter of credit, what we call a draft attached, came on?

A. No, never came on. Assigned to the bank and endorsed over to us.

82 Q. And you paid it then?

A. No. That was bought on a four months let-

(Deposition of Edgar W. Lownes.)

ter of credit. The shipment is made from China addressed to the bank with a four months letter of credit. That isn't due until four months after the shipment is made. The bankers give us the bills of lading on a trust receipt from us guaranteeing that if we use that silk and sell it the silk belongs to them until it is paid for.

83 Q. When did you make that payment?

A. Four months after the date of shipment, or practically four months.

84. Q And that payment, of course, was made to the bankers? A. Yes, when it was due.

85 Q. The bankers named in the bills of lading who endorsed them over to you?

A. Yes. They advanced the money to the Chinamen.

86 Q. Now, in order to move this cargo of waste silk, Mr. Lownes, from Tacoma to Providence at the time it was offered to us in the wet condition it would have to be kept wet and not allowed to dry?

A. Not necessarily.

87 Q. You would have to keep it wet to the extent of keeping down fermentation, would you not?

A. No.

88 Q. You could ship it in that condition, saturated completely, [116] and allow it to come along? A. If it came on a silk train, yes.

89 Q. We will say a silk train—that moves in how many days, six or seven days? A. Yes.

90 Q. You don't think it would ferment to any extent? A. Not enough to damage it.

(Deposition of Edgar W. Lownes.)

91 Q. Under the maceration method how long would you allow maceration to go on before you would take it out and wash it off?

A. From five days to two weeks.

92 Q. And if it is allowed to remain in the macerated state longer than that what effect would it have on the fiber? A. It would weaken the fiber.

93 Q. Because of the nonchecking of the fermentation from the heating?

A. Of the fermentation from the heating.

94 Q. Now how much did you allow by way of damage, Mr. Lownes, for the discoloration of the silk?

A. Didn't allow much of anything.

95 Q. It was immaterial to you whether the silk was discolored or not?

A. At that time it made no difference.

96 Q. You could have used it? A. Yes.

97 Q. And the damage which you claim is by reason of the weakening of the fiber?

A. The weakening of the fiber.

98 Q. Did you examine the fiber personally or have it done by others?

A. I examined it personally.

99 Q. What weakened the fiber?

A. The heat and fermentation principally. [117]

100 Q. Allowing it to go on and ferment for a long time afterwards? A. Yes.

101 Q. And not checking that fermentation?

A. Not checking it.

102 Q. Just as you have described they allowed

(Deposition of Edgar W. Lownes.)

maceration to go on? A. Yes.

103 Q. That could have been kept down by keeping it saturated or immediately boiling the silk and washing it off, washing the salt water out?

A. Yes.

104 Q. Of course as soon as you would bring the silk on here that is the very thing you would do?

A. Work night and day and save it.

105 Q. Save it by putting it into boiling hot water and chemicals, as you say? A. Yes.

106 Q. What chemicals would you use?

A. Soda, some form of soda, some potash.

107 Q. You spoke of having experience with waste silk saturated by certain waters like flood water, salt water, and so forth? A. Yes.

108 Q. And you found that it was heating, did you not? A. Yes.

109 Q. And did you find it heating to the extent of injuring the fiber?

A. Never allowed it to get that far.

110 Q. Where was it. Did you have it in an open room or in a drying room or where?

A. In an open room.

111 Q. Open room where the gases or whatever it is that results from fermentation can escape?

A. Yes. [118]

112 Q. Did you find any of it that got to the extent that it charred the fiber? A. No.

113 Q. Well, as you said, you didn't allow it to get that far before you cared for it?

(Deposition of Edgar W. Lownes.)

A. I have seen silk that has been wet for years without charring.

114 Q. That is out in the open?

A. Yes. I have also seen it in closed rooms that had been wet for years.

115. And you have noticed where it has been wet for years the fiber is finally destroyed, is it not?

A. Almost destroyed; weakened so it is not practical to use it.

116 Q. Exactly. You spoke of seeing silk waste charred in connection with being saturated. Was that due to its own fermentation or heating?

A. No.

117 Q. What was that due to?

A. Due to fire from extraneous cause.

118 Q. Heating from the outside and charring?

A. Yes. Fire inside of the bale arising from foreign matter in the bale.

119 Q. In other words, you would find inside of the bale foreign matter? A. Yes.

120 Q. Such as what, Mr. Lownes?

A. Piece of an overall, cotton wet.

121 Q. Piece of the cocoon?

A. No, never found it in steam waste.

122 Q. You do find then foreign matter in the bales? A. Not in Canton waste. [119]

123 Q. Well, you have to sort it and pick it by hand. You find straw and hair?

A. Straw and hair, yes.

124 Q. Where this is spun out or gathered it is mostly in places where they keep the goats and

(Deposition of Edgar W. Lownes.)

sheep together, and so forth,—isn't that true?

A. Yes. No, it is packed and dressed in regular, what they call go-downs, equivalent to warehouses, regular factories.

125 Q. Those places are not so clean but what you get foreign matter by way of straw and hair, and so forth?

A. The straw and hair doesn't get in there.

126 Q. Where?

A. In what they call silk filatures, they find the ends of the silk and straw, little wisps of straw.

127 Q. In one of your instances you found where there was a piece of an overall in one of the bales?

A. Not in any China silk.

128 Q. This waste silk that you said was charred by reason of heating, that you found foreign matter inside of the bale that had heated so that it charred the silk waste? A. When put in the dry ovens?

129 Q. Yes.

A. Yes. That was waste produced in American factories.

130 Q. This shipment that you had in mind that came from the Pacific Coast, was it completely saturated with salt water?

A. No. Only some bales.

131 Q. A few bales? A. Yes.

132 Q. And to what extent were they saturated?

A. I couldn't say as to that. It is sometime ago. We have had shipments, though, when bales have gone overboard and completely saturated. [120]

133 Q. Yes. Going back once more to silk waste

(Deposition of Edgar W. Lownes.)

which you say you have seen lie around for a long, long time—I think you said a year—what was the condition of the fiber eventually? In what condition did it leave it? Did it leave it in a brittle breakable condition?

A. Yes, sir; had no strength.

134 Q. Had no strength at all and you could crush it right together, could you not?

A. Oh, no, no.

135 Q. If it were dried? A. No.

136 Q. Eventually, Mr. Lownes, if it were allowed to ferment and not taken care of at all, would it not leave the fiber in what you would call a brittle condition?

A. Well, it would be brittle but not so you could crush it. It would never powder up.

137 Q. But it would have no strength at all?

A. Oh, yes, it would have strength. It would have a great deal of strength but not strong enough to make it practical to work with.

138 Q. This particular waste silk, did you attempt to wash any of it when you got it here or merely examined it and then rejected it?

A. No. We washed samples of it.

139 Q. You did wash some of it? A. Yes.

140 Q. Did you preserve any of those samples, Mr. Lownes? A. I don't think so.

141 Q. To what extent was the waste silk, when it arrived here, still heating or had it cooled?

A. Well, the outside had cooled. I couldn't say as to the inside. [121]

(Deposition of Edgar W. Lownes.)

142 Q. Well, had you broken any bales open in order to test them?

A. It didn't come in bales. Came in a large matted mass like manure, smelt very strong and I didn't want to handle it very much myself.

143 Q. You spoke of a former experience that you had in the shipments—especially the shipments from the Pacific Coast through—that there was no evidence of combustion. What did you mean by “combustion”? Did you mean a flame?

A. No, nothing. No charring.

144 Q. Did you find any heating at all?

A. Yes, but not over, I should say, 120 degrees.

145 Q. What was the extent of damage of that particular shipment?

A. The damage was very small. We have had shipments come through with very few bales damaged out of a big shipment and practically no loss.

Redirect Examination by Mr. LYETH.

146 Q. You spoke about the time of the maceration period being about from four days to two weeks. Would the rewetting of the silk with new water, fresh or salt, extend the time of maceration?

A. Yes.

147 Q. In the hypothetical question that I asked you this morning with respect to this particular silk, the wetting down of the silk while it was on the wharf or the wetting of it while it was in transit in the cars, would or would not that prevent the maceration process attacking the fiber itself?

(Deposition of Edgar W. Lownes.)

A. It would, especially if the water was cold.

148 Q. Is it true that the fermenting process takes place in the animal matter, the gum?

A. Yes, what is called the sericin.

149 Q. The maceration process destroys this sericin, is that it? A. Yes. [122]

150 Q. Is that usually completely destroyed by the fermenting process before it attacks the silk?

A. No. It loosens it. The water will wash it off.

151 Q. Does the fermenting process attack the silk fiber itself before the gum is macerated?

A. Not noticeably.

152 Q. Does the salt water have any different effect on the silk, either from the point of view of possible combustion or in affecting the fiber,—any different effect than fresh water?

A. I wouldn't think so.

153 Q. The only difference would be that you would have to get the salt out before the soap could take its effect?

A. Yes. You would have to use a great deal more soap because the salt water kills the soap.

154 Q. In answer to Mr. Korte's questions this morning you spoke of a case where overalls in the bale had taken fire, cotton overalls. Was that Canton steam waste? A. No.

155 Q. What kind of waste was that?

A. What is called throwsters waste. That is waste made in the spinning factories of this country.

156 Q. State whether or not there are foreign substances found in that sort of waste.

(Deposition of Edgar W. Lownes.)

A. Yes, cotton bands, peanut shells and all that sort of thing.

157 Q. Well, then, I understand this foreign matter sometimes catches fire? A. Yes.

158 Q. And that is what happened in the case of the overalls?

A. Yes. We presume that the overalls were greasy. I don't believe clean cotton is liable to spontaneous combustion. [123]

159 Q. You spoke about silk filatures in your cross-examination. Will you explain on the record, Mr. Lownes, what that means?

A. A silk filature is a reeling establishment in a silk raising country where the silk is taken in endless strand from the cocoon.

160 Q. Does the Canton steam silk waste contain cotton? A. No.

161 Q. You don't find any cotton fragments in it? A. No.

162 Q. You spoke about straw in the silk filatures. A. Yes.

163 Q. Do you find that in the silk waste?

A. Very minute percentage.

164 Q. Have you ever had any experience with Canton steam silk waste having foreign materials take fire in it? A. No.

165 Q. Have you recently received some Canton steam waste from China that was wet?

A. Yes. Two bales. That is about a year ago.

166 Q. Two bales were wet?

A. Yes. Came on the steamship "Ixon."

(Deposition of Edgar W. Lownes.)

167 Q. Did that reach you promptly?

A. Yes, shipped promptly.

168 Q. Shipped promptly from the Pacific Coast?

A. Yes.

169 Q. It was wet with salt water? A. Yes.

170 Q. State what damage had been done to the fiber of the silk.

A. Well, we put the silk right through and used it up with our regular silk and apparently no damage, not enough damage to amount to anything was done to it. [124]

171 Q. Will you describe, Mr. Lownes, the maceration process of degumming? Do they use any chemicals?

A. Well, some do and some do not. There are all kinds of maceration. The old style maceration is to put the silk into water of 180 degrees and gradually allow it to cool down to 140 degrees and keep it at 140 degrees for two weeks. Some get it up almost to the boiling point to start with and it gradually comes down. They start it hot in order to hasten it. Then cover it well, keep the air from getting at it and allow it to stand for two weeks. If it falls below 140 they should warm it up a little bit. And that is all there is to it. After that it is taken out and thoroughly washed out in running water. Nowadays they put chemicals in to accelerate and help it.

Mr. KORTE.—What kind of chemicals?

WITNESS.—Little soap and soda. In order to hasten it too, they take the old water from the

(Deposition of Edgar W. Lownes.)

previous maceration and put it in with the new. And then there is another maceration where they use chemicals almost entirely and get results in about two days instead of two weeks.

172 Q. (By Mr. LYETH.) Referring to this particular shipment from the "Canada Maru," and to my hypothetical question, if the silk waste which had previously been wet with salt water were wet with fresh water—that is, additional water—from time to time, what effect would that have on the maceration process?

A. It would stop the maceration or retard it.

173 Q. The fact that in the maceration process as used abroad they start with water at 180 degrees, does that hasten the maceration process, the hot water? [125]

A. The hot water starts the heating of the germs much quicker and the heat accelerates that. You could start in cold water and the silk itself would heat the water up to possibly 110 or 115. I have never tried to warm it up itself but it would take a long time to do that and use two or three days, so they always start with warm water.

Recross-examination by Mr. KORTE.

174 Q. Then when you examined it you rejected the shipment and turned it over to the insurance company, or had they taken possession of it before that? A. No, it was in our possession.

175 Q. What did you do after you found it was worthless? Did you ship it to New York?

(Deposition of Edgar W. Lownes.)

A. Not until we were instructed to.

176 Q. By whom? By the insurance company?

A. Yes.

177 Q. And they were the ones then who sold it there?

A. Yes. We made a test similar to this one before we rejected it.

Redirect Examination by Mr. LYETH.

178 Q. Could you give any idea how much the fibre had been weakened?

A. No, I couldn't give it in terms of figures?

179 Q. Well, had it been materially weakened?

A. Yes. So much so that it wasn't commercially practical to use it,—that is, for spun silk. It could be used for something else, for making what is called a noil silk where they break the fibre up and spin it on a wool machine.

Recross-examination by Mr. KORTE.

180 Q. Couldn't you work it in with your other silk, Mr. Lownes?

A. Not without spoiling the other silk. [126]

181 Q. In what way would it spoil the other silk?

A. Our silk that we get is a very nice long silk, white and of uniform fibre. The minute you put a short fibre in with a good silk you would cause what we call slugs, or bad places, in the yarn and the short fibre would show.

182 Q. What would it be worth for use in the noil silk?

(Deposition of Edgar W. Lownes.)

A. Worth very little. Perhaps four or five cents a pound.

183 Q. What was the reason for the low price? Was it because silk had come down or the Government had no use for it any longer?

A. No. It couldn't be used in regular business.

Mr. LYETH.—You mean in spun silk?

WITNESS.—Couldn't be used in spun silk.

184 Q. Is noil silk spun then?

A. Well, it is a spun silk but the fibre is so short we couldn't use it.

Deposition of Theodose Bellinger, for Plaintiff.

And to further prove the issue on the part of plaintiff, the deposition of THEODOSE BELLINGER was introduced and read in evidence, as follows:

(By Mr. LYETH.)

Q. Mr. Bellinger, what is your occupation?

A. I am the General Agent of the Champlain Silk Mills, Whitehall and Brooklyn.

Q. Are you the factory manager of Whitehall?

A. The factory manager of Whitehall, and attend to the purchase of raw material. [127]

Q. How long have you been in that position?

A. I have been with the Champlain Silk Mills twelve years; in my present position for the last five years.

Q. Does the Company handle Number 1 and Number 2 Canton silk waste?

A. We do, at times.

(Deposition of Theodose Bellinger.)

Q. State whether or not you have had experience with number one Canton waste.

A. Yes, we have processed both number 1 and number 2 Canton waste.

Q. Have you ever had occasion to handle number 1 Canton silk waste which has been wet?

A. Yes, sir.

Q. Did that come into the factory wet?

A. Yes.

Q. State whether or not in your opinion and from your experience Number 1 and Number 2 Canton steam silk waste which has been wet with salt water is liable to spontaneous combustion?

Mr. KORTE.—I will enter my objection that the witness is incompetent to give an opinion.

A. I do not.

Q. Have you had shipments of Canton steam waste come to your factory damaged by salt water?

A. Yes.

Q. Have you observed any tendency to spontaneous combustion? A. I did not.

Q. Have you ever heard of Canton steam waste igniting from spontaneous combustion?

A. I never have.

Q. Have you at my request conducted an experiment with a quantity of Number 1 Canton steam silk waste? A. Yes. [128]

Q. Will you state what you did and what results you found?

A. On August 31 I had our Chemist at the Whitehall Mill take 15 pounds of Number 1 Steam Waste

(Deposition of Theodose Bellinger.)

and wet it with a solution of salt water, a solution he prepared containing exactly the same percentage of salt that salt water usually contains.

Q. Sea water?

A. Sea water; yes. These 15 pounds of waste were soaked 24 hours in water containing the same amount of salt as sea water. It was allowed to drain until September 2d,—to drip, which would be about three days, when it was covered with bur-lap bags, compressed somewhat, and allowed to stand in a moderately warm room. The temperature of the air and silk was taken daily to determine the elevation of temperature of the silk over the air. Within the first four days the elevation was only very slight, but no record was kept. The following days the temperature of the air and silk were as follows: September 7th the air was 72° Fahrenheit and the silk was 77°, a difference of 5°. On September 8th the air was 73° and the silk was 82°, a difference of 9°. The second test was made on the 8th, when the air was 75° and the silk was 82°, a difference of 7°. On the 9th the air was 84° and the silk was 95° a difference of 11°. On the 11th the air was 71° and the silk was 84° a difference of 13°. On the 13th the air was 78° and the silk was 87°, a difference of 9°. On the 14th the air was 71° and the silk was 82°, a difference of 11°. On the 15th the air was 75° and the silk was 88°, a difference of 13°. On the 17th the air was 75° and the silk was 88°, a difference of 13° and on the 18th

(Deposition of Theodose Bellinger.)

the air was 74° and the silk was 86°, a difference of 12°.

The increase in temperature so far noted is not anywhere near enough to cause spontaneous combustion, and the sample shows no sign of producing any greater elevation of temperature. [129]

Signed by G. H. Hopkins, of our mill, and the statement was verified by myself.

Q. Did you observe the temperature?

A. Yes, I observed the temperature, and observed the material when it was brought to his department to be soaked, August 31st, and while it was allowed to remain on the floor in order to determine the temperature of the material.

Q. And this was Number 1 Canton Steam Waste?

A. This was Number 1 Canton steam waste.

Q. Mr. Bellinger, previous to the time you became factory manager and general agent of the Champlain Silk Mills state what experience you had in respect to silk waste in the factory?

A. For five years prior to 1915 I was the Whitehall representative of the buyer for the Champlain Silk Mills, located in New York at the time, in other words I had charge of receiving the raw waste and examining it, and comparing it with the standard samples under which the material had been bought, and reported to Mr. Oscar Meyer who was at the time the Vice-President of the Champlain Silk Mills, located in New York.

Q. State what experience, if any, you had prior to your connection with the Champlain Silk Mills?

(Deposition of Theodose Bellinger.)

A. I was ten years in the cotton business. I was eight years with the Lawton Spinning Company, of Woonsocket, Rhode Island, spinners, and the prior two years with the William A. Slater Mills Corporation, spinners and weavers of cotton goods, located at Slatersville, Rhode Island, and one year's experience with a worsted weaving plant. I went with the Champlain Silk Mills twelve years ago, and have been with them ever since.
[130]

Q. Assume, Mr. Bellinger, that a cargo of Number 1 and Number 2 Canton steam silk waste became thoroughly wet with salt water, due to the stranding of a vessel and the consequent flooding of the hold in which the silk waste was stowed, on August 1st, and assume that the waste was unloaded on the dock on August 12th, and that it was wet down by hose while on the dock, and assume that it had been loaded in the refrigerator-cars on the 13th and 14th, and had been forwarded to its destination, Providence, Rhode Island, for the American Silk Spinning Company, by passenger train, and that it had immediately been put into the factory process upon arrival, so that it would have been in a wet condition for from three weeks to four weeks, when it was put into the factory process, will you state what in your opinion the percentage of loss in manufacture would have been, disregarding the element of discoloration?

A. Between 8% and 10%.

Q. Would the element of discoloration at that

(Deposition of Theodose Bellinger.)

time, in August and September, 1918, have made any difference to a manufacturer of spun silk?

A. That would depend entirely upon the purpose for which the waste was to be used.

Q. If it is to be for Government use?

A. The color would have absolutely nothing to do with it.

Q. Was your factory engaged in making cartridge bag cloth for the Government?

A. It was; 85% of the production was going to the Government.

Q. Will you state whether or not that was the condition in production of other spun silk mills?

A. I believe that it was the same condition that prevailed at all the mills, because the orders were generally placed *pro rata* based on the number of spindles each spinner operated. If we [131] were operating 85% of our spindles we have a right to assume the other spinners were operating a like number of their equipment.

Q. Do I understand your testimony to be that if this steam silk waste was to be used for the manufacture of cartridge bag cloth for the Government, that discoloration would make no difference?

A. No difference whatever.

Q. Why not?

A. Simply because the Government did not specify anything in regard to color. In giving out the specifications on that class of yarn it was specified that a certain yardage should be delivered to the plant, and a certain breakage strength

(Deposition of Theodose Bellinger.)

should be in the yarn, but nothing was said as to what the color of the yarn should be.

Q. Is it a fact that it made no difference whether the cartridge bag cloth was white or brown?

A. No difference whatever, as far as I know. The question of color never was raised.

Q. Mr. Bellinger, are you familiar with the silk industry in China and Japan? A. I am.

Q. You have been there and observed it?

A. Yes, sir.

Q. Will you state what Number *L* Canton steam waste is, and how it is produced?

A. Number 1 Canton steam waste is the waste produced in the reeling of the Canton raw silk produced in the filature. Some is produced in the homes where they have hand weaving, but the greater portion is the by-product of the reeling industry of Canton and the neighborhood of Canton.

Q. Will you describe briefly how the raw silk is produced, and what is left and what the silk waste is? [132]

A. The first step naturally is the raising of the silk worm. That is accomplished by the Chinese raisers by making selections, after the cocoon is spun, of the best quality of cocoon that they can select from that season's production, and instead of baking the cocoons, which is the usual course of any cocoon intended for reeling purposes, they allow the cocoon to remain in the ordinary temperature,

(Deposition of Theodose Bellinger.)

which changes the worm into a butterfly. That butterfly works itself out of the cocoon, and they have means, at least—

Q. You are speaking of spinning the cocoons?

A. I am leading to the spinning of the cocoon itself. After the butterfly has emerged from the cocoon they are mated, a male and female, and after the usual connection has taken place the male butterfly is destroyed and the female butterfly is allowed to lay her eggs and they are usually on what are called egg papers, and usually under a small glass, probably an inch and a half in diameter. After the eggs have been laid the female butterfly is killed and examined under the microscope, to find out whether she was absolutely healthy, and if she was those egg papers are prepared and kept in a cool place until the season in which they are to be used, and usually they are sent out into the interior about the time the mulberry leaves are ready to be picked, for the spinning of the cocoon. After being exposed to the rising temperature five or six days the eggs hatch and become tiny worms. They proceed to eat the mulberry leaves, until the worm in about four weeks is completely matured and ready to spin the cocoon. The spinning of the cocoon requires from twenty-four to thirty-six hours, and the cocoons that are intended for reeling are immediately baked in order to kill the worm inside and prevent it from becoming a butterfly and

(Deposition of Theodose Bellinger.)

getting [133] away from the cocoon and making it unsuitable for reeling purposes. Those cocoons are sent to the filatures, where they are sorted out, and the good cocoons are given to the filatures, to the Chinese or Japanese who do the reeling, and are put into a basin in which there is boiling water, in order to dissolve the gum on the surface of the cocoon, and from the basin they are passed to another basin from which the reeling is done, and the girl that attends to the reeling has a small whisk-broom with which she keeps striking the cocoons so as to remove the surface and outside envelope in order to get it into condition for reeling purposes. Naturally she detaches a lot of fibres that stick to the whisk-broom and are discarded and is part of the waste used in the spun silk industry. In weaving the cocoon the outside surface contains the better silk, because that is spun by the worm when he is strong. When the worm gets down to the bottom of his work he gets weaker and the silk is weaker. After spinning a certain portion of the top surface it begins to break, and when the girl finds it breaks too often this portion of the cocoon is taken out of the basin and that also forms a part of the waste silk used in our industry. After this waste is made, in the best regulated mills it is usually cleaned. They take out the portion of the worm that is left in the partly spun cocoon, and this waste is washed, and at times passed through an extractor in order to take out the water remaining in the fibre, and dried in ovens or automatic driers.

(Deposition of Theodose Bellinger.)

In a less well regulated mill this waste is exposed to the weather. If it is a nice sunny day, it dries quickly; if it is in the rainy season, sometimes the drying process requires several days, and naturally the silk exposed to the weather is not as good as the silk dried under [134] the proper atmospheric conditions, and this is what determines the quality of the waste to some extent.

Q. Is the waste you described last—state whether or not that is Number 2?

A. As a general rule, waste exposed to the weather and dried under conditions such as I have described is classed as Number 2 waste, because it is darker in color, and that is because it is less desirable for manufacturing purposes than one which is treated properly after being made in the filature.

Q. As a rule, as I understand your testimony, Number 1 silk waste is dried artificially?

A. As a general rule, not always; in other words, if a waste is dried outside under proper conditions it will come out in as good a quality as one dried artificially, but of course it is a more risky proposition, especially in the Orient the weather is more or less uncertain.

Q. Then in the course of manufacture of this product it is wet? A. Yes.

Q. And requires drying? A. Yes.

Q. Will you state whether or not in your observations in the manufacture, there is ever any tendency to spontaneous combustion of the product?

A. No, I never did.

(Deposition of Theodose Bellinger.)

Cross-examination by Mr. KORTE.

Q. Then the grades Number 1 and Number 2 merely designate the particular kind of silk, that is, raw or waste silk, that is segregated, but do not mean that Number 1 has different ingredients from the ingredients of Number 2?

A. The only difference being, as a general rule Number 2 waste contains more animal matter, more worm than Number 2, because [135] a mill not equipped to-day for drying properly is usually a mill which does not produce as high a standard of goods as one which is, and consequently the waste is more neglected, doesn't receive the attention Number 1 would receive.

Q. Wouldn't Number 1 contain about as many waste cocoons?

A. Number 1 will not,—as we receive it does not because it receives a closer sorting.

Q. I have some here which I think was received from the Company, so there will be no dispute about the kind of waste silk we are experimenting. We have all got to experiment more or less. What would you say that sample is which I show you (handing a sample to witness)?

A. I would call that a good Number 1 Canton waste.

Q. Yes. Number 2 would contain more animal matter than Number 1, I have shown you.

A. Yes, and would be very much darker in color.

(Deposition of Theodose Bellinger.)

Q. The experiment you made was your visual observation of the temperature by means of a thermometer? A. That is all.

Q. Under the conditions under which you observed it, as I understand you had 15 pounds of waste? A. Yes.

Q. Contained in a gunny-sack?

A. No, we covered it up with sacking.

Q. It was laid on the floor? A. Yes.

Q. And covered up with the gunny-sack; you kept it saturated?

A. It was saturated when we first started the test with the solution I spoke of, and we allowed the waste to remain in a wet condition twenty-four hours. Then we allowed it to drain naturally, and set it on the floor covered with gunny-sacking, and weighted down to produce the same pressure under [136] which the waste is baled in Canton.

Q. How could you do that?

A. By putting the waste on top of the boarding and weights on top to press it down and produce practically the same effect as the bales put up in Canton.

Q. What pressure are they put under?

A. They are simply hand baled, are quite loosely put up.

Q. You don't know how these particular bales were put up?

A. They are all in the same way. I saw some bales myself.

Q. Which ones did you see, the ones which were

(Deposition of Theodose Bellinger.)

saturated? A. I saw some thoroughly wet.

Q. You saw the damaged ones? A. Yes.

Q. You didn't see any of the undamaged?

A. No.

Q. But the damaged had been turned apart and more or less rebaled as I understand it. And how did you make your observation in reference to the temperature; you took the temperature of a room like this?

A. Yes, we had a room a little larger than this with an ordinary thermometer.

Q. With the windows open? A. Yes.

Q. They had to live in it, had to have atmosphere?

A. Yes.

Q. You took the thermometer on the wall and observed the temperature of the room? A. Yes.

Q. How did you make your observations in reference to the temperature of the silk?

A. We took the thermometer and placed it on the silk. [137]

Q. In what way?

A. We took the thermometer and covered the end of the thermometer with the wet silk and let it stand there a few moments, and then had the temperature it showed.

Q. How did the wet silk act when you had it under the pressure, as you claim?

A. It showed absolutely no change whatever.

Q. Did it start to work at all,—ferment?

A. No, none whatever, because there is a certain odor that escapes from the material on account of

(Deposition of Theodose Bellinger.)

the animal matter you have in there.

Q. You didn't observe it producing any heat whatever? A. None whatever.

Q. You said it made no difference with reference to the discoloration if you are going to use it for Government purposes; for commercial purposes it made a difference? A. Yes.

Q. In what way?

A. Simply because,—I am talking from our own manufacturing standpoint,—we made a specialty of white silks and consequently discolored wastes are not produced by the mill our customers expected it from.

Q. Could you have used it for other things if you had the advantages of dyeing it different colors; would it have made any difference in discoloration?

A. It would if you were to dye the stock in delicate colors.

Q. In black? A. No.

Q. In tan it would have made no difference, you could have used it for that nicely?

A. Yes. [138]

Q. This discoloration was caused you said by the sea water coming in contact with the fiber?

A. Yes.

Q. It was saturated at sea. You said also that if it had been brought on in a wet condition you could have saved it all except 8% or 10%? A. Yes.

Q. To do that you would have to keep it in a wet condition, would you?

A. Personally, I wouldn't claim so, because I

(Deposition of Theodose Bellinger.)

claim even if the material had been allowed to dry partly on the way from the Coast to the mill it wouldn't have made any difference practically in the manufacturing for the purposes the silk is to be used.

Q. If it dried partly could you use the dry part; the outer surface would dry?

A. You could use it for the same purpose this waste was intended to be used.

Q. Even though dried?

A. Partly dried, because the first process it goes through in the manufacture it is to be wet again.

Q. The thought I had in mind was this: that it was saturated with salt water? A. Yes.

Q. Was in a wet condition? A. Yes.

Q. Now it was partly dried when it came on here?

A. Yes.

Q. Eventually you saw it? A. Yes.

Q. What was its condition then,—dry or wet?

[139]

A. You could say it was very damp.

Q. Was that sufficiently moist so you could have gone to the mill and washed it out?

A. Yes, in fact there was a sample sent to us we did process.

Q. What was the effect on that sample?

A. It came out discolored.

Q. That was the only damage you found?

A. The fiber had been slightly weakened.

Q. Which it would be if exposed to salt water.

A. Yes, or any water if allowed to remain in that

(Deposition of Theodose Bellinger.)

condition. That is why I stated that disregarding the discoloration I would assume the damage would be between 8% and 10%.

Q. I didn't understand your answer, I catch it now, thank you. Of course as soon as it arrived here at the mills you would proceed immediately to wash it and get the animal matter out, and they dry it? A. Yes.

Q. And that is the way of preserving it?

A. Yes.

Q. Is that a very difficult job; is there any special machinery you need for that, or is it simply a wet wash proposition?

A. This is reeling. Where it is spun the manufacturing comes in, to be able to do it properly.

Q. It takes a man who understands the business?

A. Yes. I mean that is one difficult process of spun silk.

Q. I would like to know what process it goes through. Tell me the method you use, and what you do when you bring the raw silk to the factory, the first thing you do, what do you do with it?

A. After the raw silk is unloaded it is examined and compared with the sample from which it was purchased. If found to be up [140] to sample, —I am describing our system in the factory, every shipment is given a factory allotment and put in the warehouse. Every week there is a schedule in what we call the boiling department or degumming department, stating the number of boils, a batch of 100 pounds, are to be processed a given week.

(Deposition of Theodose Bellinger.)

Those batches of 100 pounds if they are intended for what we call the boiling process are given to a group of men we call baggers. They break up the silk into small pieces of about one-half pound and put this waste into a bag, a mesh bag, which is tied, and after the entire 100 pounds is put up it is passed on to the boiling and degumming department. There we have large vats with between 200 and 250 gallons of water put in and a certain percentage of soap and a certain percentage of alkali, and it is brought to the boiling point.

Q. What would that boiling point be?

A. It is 212, and then this material put into the small bags is put into the vat and degummed a certain period of time.

Q. What temperature must you maintain in the boiling process; do you have to watch that at all?

A. Yes, if it is a boiling process it has to be kept at the boiling point all the time if we want to have the regular results in the boiling. There is another process called maceration. This is not a boiling process, it is simply a process which degums the waste by a slower process,—Maceration, simply lukewarm water, with a certain amount of chemicals, some chemicals, others soap, and accomplishes the same results as in boiling.

Q. In boiling you retain it at the boiling point, and don't let it go beyond the boiling point?

A. Once it is kept boiling within the period of time determined for that class of waste we get usually the results we are after. [141]

(Deposition of Theodose Bellinger.)

Q. Does it depend on the kind of water, whether it is soft or hard water?

A. All well organized mills use nothing but pure soft water. It is usually softened by artificial means.

Q. Then the original treatment of the waste silk is boiling the gummy or animal matter out?

A. That is right.

Q. And naturally getting the fiber of the waste free from animal matter you can dry it and spin it?

A. That is right.

Q. I asked you whether or not you could use silk by dyeing it to darker colors. Of course the percentage then of damage would be the same as you put it, barring the discoloration, would it not?

A. Yes. The only point is that the market for such colored silk is very limited, as far as the spun silk industry is concerned.

Q. I assume the greatest demand is for white material and from that they make it up into all the different colors? A. Yes.

Q. The discoloration you found by reason of the salt water, was it so set that it could not have been bleached,—or do you bleach silk fiber the same as cotton and wool?

A. It receives a bleaching process while being degummed, but our experience has always been that silk or waste which has been wet and allowed to remain in a wet condition will not bleach out to the extent that waste that is not damaged before the degumming process.

(Deposition of Theodose Bellinger.)

Q. So in dealing with raw waste silk any such silk that has been saturated with any kind of water depreciates of course in market value immediately?

A. If it is allowed to remain in a wet condition, yes.

Q. What length of time, Mr. Bellinger, must you confine the [142] boiling process; can you leave it in a longer or shorter time; is there any definite time you must boil it in order to be successful?

A. Certainly, well, this is a question that I don't know—this is usually a secret of the trade.

Q. I don't want you to give away any secrets only in a commonplace way?

A. A certain waste should receive a boiling process,—We have a first and second process in the boiling. As far as the first boiling process is concerned the waste is allowed to remain in the liquor 25 or 30 minutes. Naturally you will get a certain irregularity in the fiber, which will cause you manufacturing trouble afterwards.

Q. You aim at getting a uniform fiber?

A. We aim at getting a uniform fiber and we go so far as to make a sample of each manufacturing lot in the degumming in order to be sure the degumming will be done properly in the entire lot.

Q. I think you spoke of having had experience with raw waste silk being saturated with salt water in the past? A. Yes.

Q. What did you do with it—were you able to accomplish anything in saving it?

A. What we showed was in our own particular

(Deposition of Theodose Bellinger.)

case, as soon as shipment is received in that condition we notify the transportation company and have them send a representative to our mills and examine the waste in the presence of one of our representatives and agree on the percentage of the bale which has been damaged and arrive at a certain claim. Those claims are usually put in with the transportation company with the understanding they will give us a decision promptly, so we can process the waste and save as much of it as we can. [143]

Q. I mean not so much the trying to get the claim out of the railroad, but what you do with it by way of salvaging it and working it up?

A. We simply process it, and if it is waste that has been discolored to any great extent we make a claim and keep the stock separate and use it in a very small proportion of the mixtures, so as not to interfere with the ultimate quality of the goods.

Q. So in this particular instance if it could have been worked into powder bags for the government there wouldn't have been any damage at all by reason of the discoloration?

A. Not by reason of the discoloration.

Q. Aside from that was there any damage?

A. Yes, I would say 8% to 10%.

Q. I mean to the silk after it came out of the salt water in the vessel. A. Yes.

Q. And of course was there on the docks and then afterwards was taken over to Seattle and dried. Now, between the time it was in the salt

(Deposition of Theodose Bellinger.)

water and on the docks, and so forth, aside from its discoloration— A. Yes.

Q. No,—strike that out,—if it could have been worked up and washed and worked into cartridge bags there wouldn't have been any loss?

A. Six months after it was wet?

Q. Assume that it laid in salt water for some 14 or 16 days, and you then started to treat it at the mills, could the cargo have been wholly saved by the process you ordinarily go through, that it would come to the mills for manufacture?

A. All but, I should say, 10%, aside from the discoloration. [144]

Q. What is that 10%?

A. That 10% would be for the weakened fiber, the simple fact that the fiber had been allowed to remain wet that length of time. If the shipment had been received by us in a wet condition we wouldn't have attempted to make 100% yarn out of that material. We would have blended it with something else in order to reduce the danger in manufacturing as much as possible.

Q. You saw the silk when it came on? A. Yes.

Q. After they had tried to dry it to get it in shape so they could move—it was such that it was useless then?

A. I considered the entire shipment worth \$10,000. That was the offer I made on it.

Q. What did you think damaged it; what was the matter with it, that you allowed so little value?

A. Because it was very much discolored, and the

(Deposition of Theodose Bellinger.)

fiber had been weakened very much.

Q. Assuming you could have used discolored silk in your factory, make use of it in the garments or whatever you would manufacture for the Government, barring the discoloration, that you could have used it, what would you say it was valued at, aside from the weakening of the fiber, which of course is the definite inherent damage?

(Question read by the stenographer.)

Mr. KORTE.—I want to know if there is any difference in the damage before it was sent on than it was before they attempted to dry it as Seattle.

A. If there was any difference in the damage when it was wet at the Coast?

Q. And when it arrived here?

A. Very much different. [145]

Q. What was the difference?

A. Because of the mere fact it had been allowed to remain in a wet condition, dried out at the Coast,—it wasn't dried out—because the sample we had submitted to us was still in a damp condition, and the small samples we put through at the mill at the time showed the fiber had been very much weakened on account of having remained in a wet condition so long.

Q. Then the fiber was weakened by the fact it lay saturated in the salt water so long?

A. Naturally that had some bearing on it, and also the fact it had been partly dried and kept in that condition for that length of time.

Q. You would not offer very much for a cargo

(Deposition of Theodose Bellinger.)

of silk that had been in salt water say 15 or 20 days would you, barring discoloration,—you couldn't use the discolored part?

A. I would offer 90% of the value to use it for the purpose we were using waste at the time. Under present conditions, from our own manufacturing standpoint, probably 50% of its value.

Mr. LYETH.—That is, you are considering the discoloration?

Mr. KORTE.—Considering discoloration; you can't use discolored fiber.

The WITNESS.—Yes.

Q. You would have to dye it in dark colors, and you say you don't do that?

A. It is very uncertain business.

Q. What seems to be uncertain about the heavier colors?

A. Wet colored silk the spun silk spinners seldom use, it goes to the woolen and worsted manufacturers for decoration in the fabrics, and of course change of style from one season to [146] another, you sell to-day all violets and six months from now perhaps nothing but gray. It is a very uncertain class of trade.

Redirect Examination by Mr. LYETH.

Q. You spoke about drying out and remaining in a dried out condition, causing a weakness of fibre; will you explain that?

A. Yes, we find that waste silk which is wet and allowed to dry in the natural process of drying will be more discolored and much more difficult to

(Deposition of Theodose Bellinger.)

process afterwards than a waste which is treated after being wet and not having been allowed to dry out.

Q. As I understood, you testified on cross-examination that you saw samples of this particular cargo of silk waste?

A. Yes, we had some samples sent to Whitehall, and I saw the waste. Afterwards I was present at the auction you held in New York, and saw the goods in the warehouse.

Q. And you know the condition? A. Yes.

Q. That was at the auctioneers, Burling & Dole?

A. Yes.

Q. Will you describe the condition of the silk waste you saw?

A. The samples on exhibition there in the basement of the building were still, some of them quite damp. The stock was very dark in color, and in our estimation had been very much weakened. Some of it was discharging a very bad odor the morning we saw it there.

Q. How long does the process of degumming by fermentation that you spoke of take, without boiling?

A. There are two distinct processes. One takes twenty-five or thirty minutes; the other one takes from seven to eight days.

Q. Do I understand your testimony that this silk having been allowed [147] to dry naturally caused the weakening of the fibre?

A. I beg your pardon?

(Deposition of Theodos Bellinger.)

Q. Do I understand your testimony to be that the allowing this silk out of the "Canada Maru" to dry by natural means, and the length of time that it had been drying, caused the weakness of the fibre? A. Yes.

Q. Referring to my hypothetical question,—you remember— A. Yes.

Q. The silk had come forward? A. Yes.

Q. What difference would it have made in the manufacturing process of the silk, assuming that it had been wet the same length of time, due to the presence of salt water as distinguished from fresh water?

A. It would have required either an additional process of boiling or a much longer original process of boiling.

Q. Why?

A. Because the wetting of the silk seems to have a certain action on the fibre, which requires a much longer treatment in the degumming or maceration process.

Q. You would have had to remove the salt before you put the soap in?

A. No, we wouldn't; we would have treated it the ordinary way, only we would have increased the period of boiling; that is where the danger comes of weakening the fibre further on account of keeping the material under treatment a longer period of time than is usual when the silk is in proper condition.

Q. Did you consider that extended treatment in

(Deposition of Theodose Bellinger.)

the manufacturing process in your estimate of 8% to 10% damage? A. Yes.

Q. Are the bales of Canton steam silk waste that you have observed of uniform pressure?

A. Yes, they are. [148]

Q. How are they packed?

A. There are three distinct parcels which are tied together, in what they call the go-downs in Canton, and those three parcels are combined and tied usually with a piece of rattan and covered over with straw matting, and those bales are all put up in uniform weight in what we call picol bales of 133 pounds. They make an allowance of 5% on the original weight, due to the loss of weight in transit, on account of the moisture drying out in the transportation between Canton and America.

Q. They are tightly baled, are they not?

A. The Canton bales are not; they are quite loose.

Deposition of Charles E. Burling, for Plaintiff.

And to further prove the issue on the plaintiff's part, the deposition of CHARLES E. BURLING was introduced and read in evidence as follows:

(By Mr. LYETH.)

Q. Mr. Burling, what is your occupation?

A. Auctioneer.

Q. Did you in March, 1919, sell a certain consignment of damaged silk waste in New York?

A. We did.

Q. Approximately how much?

A. Seven carloads.

(Deposition of Charles E. Burling.)

Q. And how many pounds?

A. 112,000 pounds—to be accurate, 112,101.

Q. Was this silk waste out of the steamer “Canada Maru”?

A. I couldn't say.

Mr. KORTE.—It is conceded that the silk waste which was handled by Mr. Burling was the silk waste contained [149] in the following cars: N. & W. 635461, P. R. R. 515193, C. & O. 8130, N. Y. C. 258539, B. & O. 96161, R. I. & G. 151247, L. V. 34995, being the silk waste involved in this suit.

Q. Will you state, Mr. Burling, what you did with respect to arrangements for the sale, advertising, etc.?

A. Upon instructions to sell these seven carloads we proceeded to accept the delivery of one carload at the stores 599–601 Broadway. The remaining six carloads were left at the Harlem River to be examined by prospective purchasers upon presentation of Burling & Dole's order to the Superintendent of the yards. We advertised the raw silk in the *Journal of Commerce*.

Q. Did you advertise the sale of the raw silk?

A. The auction sale of the raw silk which was to take place on Wednesday, March 19th, 11 o'clock at 599 Broadway was advertised in the following papers: “*Journal of Commerce*,” 17th, 18th and 19th of March; “*Daily News Record*,” the same dates and “*New York World*,” March 19th. We caused to be printed a circular descriptive of the seven carloads which we sent to the trades inter-

(Deposition of Charles E. Burling.)

ested within a radius of 250 miles. 500 of these circulars were sent out. We had numerous prospective buyers call, but not many required the permit to examine the car lots after viewing the one car which had been subdivided into three lots. The sale took place as advertised and the ten lots were purchased by four different buyers, Rudolph Cohen of New York, General Silk Trading Company of New York, A. Brauer & Brother, Paterson—they did have a New York office, I don't think they have now—and A. J. R——. I would have to get the rest of that name for you. There were possibly 25 to 35 people in attendance when the sale was held. The buyers were silk merchants, either jobbers or manufacturers. [150] The gross proceeds of the sale amounted to \$16,628.42, less charges as follows: Commission, \$831.42; cataloguing, advertising, circulars, postage and insurance—insurance for what we had in our store—\$124.71; labor and weighing—for the lot that was in the store we had a weigher come—\$91.55; freight and cartage paid \$681.93; port warden's fees, being held for a decision as to the legality of the charge, \$83.14—making a total charge of \$1812.75—net proceeds of the sale \$14,815.67.

Cross-examination by Mr. KORTE.

Q. What was the physical condition of the silk?

A. In very bad shape, wet and tangled—it was assumed that there were 867 bales, but no mortal man could tell whether there were 8000 or 800—I will

(Deposition of Charles E. Burling.)

modify that, no mortal man could possibly tell how many there were.

Q. The bales were broken, were they?

A. All broken, the worst, almost, I ever saw; we had to get some outside help, our men would not handle it, absolutely refused because of the odor and the difficulty. The condition was so bad that it would take 2, 3 or 4 men 15 minutes to half an hour to unwind a long skein, pull it out, otherwise you would have to cut it; it was so badly tangled they had great difficulty in handling it and then the odor drove away most of the buyers as well as the laborers.

Q. Were they in boxcars or open cars?

A. Boxcars.

Q. Can you detail how much you sold each one of the buyers?

A. R. C.—that's Rudolph Cohen—purchased lot 1 at 13 cents per pound, amounting to \$339.56 and lot 5 at 17½ cents a pound for \$2358.47, total \$2698.03. General Silk Company purchased lot 2 at 12 cents, \$571.32 and lot 9 at 12½ cents, [151] \$1399.37, total \$1970.69. A. Brauer & Brother purchased lot 3 at 11 cents, \$852.50 and lot 4 at 22 cents, \$2424.40, also lot 7 at 15 cents a pound, \$2660.25, and lot 8 at 12½ cents a pound, \$2550.50, total \$8487.65, and A. J. R. bought one lot, lot 6 at 15 cents, \$3472.05.

(By Mr. LYETH.)

Q. This sale was actually held at your auction

(Deposition of Charles E. Burling.)

rooms? A. At our auction rooms.

Q. Where is that? A. 599 Broadway.

Q. And the firm that you mention, Burling & Dole, is your firm of auctioneers?

A. Yes, I am the senior member of that firm.

Mr. LYETH.—And I want to introduce a sample of the stuff in its sound condition. This is the No. 1 silk waste. That is, in the condition before it was submerged in the water.

The COURT.—How large were the bales?

Mr. LYETH.—133 pounds per bale. They were hand-compressed and wrapped with matting.

Mr. KORTE.—They would be about the size of a hay bale, your Honor.

The COURT.—And in order to dry it they had to take it out of this bale and spread it on supports of some kind?

Mr. LYETH.—Yes, spread it out and have the wind dry it.

And thereupon the plaintiff introduced samples of silk waste, which were received in evidence and marked respectively "Plaintiff's Exhibit No. 6-A"; "Plaintiff's Exhibit No. 7-A"; "Plaintiff's Exhibit No. 10"; "Plaintiff's Exhibit No. 11"; "Plaintiff's Exhibit No. 12"; "Plaintiff's Exhibit No. 13"; "Plaintiff's Exhibits Nos. 14, 15 and 16"; "Plaintiff's Exhibit No. 17"— [152] all of which are transmitted to the Circuit Court of Appeals with all of the original exhibits in the case.

Deposition of Fred Pearson, for Plaintiff.

And thereupon, to further prove the issue on the plaintiff's part, the deposition of FRED PEARSON was introduced and read in evidence as follows:

Direct Examination by Mr. LYETH.

1 Q. Mr. Pearson, what is your occupation now?

A. Foreman silk-dresser.

2 Q. How long have you been employed in that capacity? A. Since 1875.

3 Q. How long have you been with the American Silk Spinning Company?

A. Going on five years; little over four years.

4 Q. And you have been silk-dresser since 1875?

A. Well, in that period of time I have had five years in the machine-shop. Outside of that, yes. That is all.

5 Q. Did you do that work in England as well as in this country?

A. Yes, sir. I was with Ormorod Brothers in England from 1875 to 1892.

6 Q. During this time, Mr. Pearson, have you handled silk waste, Canton steam silk waste?

A. More or less, yes.

7 Q. Will you state, Mr. Pearson, whether Canton steam waste which has been wet with salt water or fresh water can ignite by spontaneous combustion? A. I should say no, it cannot.

8 Q. Have you handled Canton steam waste which has been wet?

A. Yes, time and time again, from floods.

(Deposition of Fred Pearson.)

9 Q. And has that ever charred or ignited?

A. It has never charred, not to my experience, only by overheating [153] in the fan in drying.

10 Q. And what happens then?

A. Well, of course, there is always men around then. It is always taken right out right off, might be only just one piece right over the fan where the heat comes and it might have stayed too long from the negligence of the management or the drier, it might have stayed too long in one place.

11 Q. Was it heat from the friction of the fan?

A. Heat from the fan, yes. Overheating of the fan. That is the only time I have ever known it to ignite.

12 Q. Can you burn steam waste, silk waste?

A. Well, it wouldn't burn. It just charred, blackened and charred.

13 Q. That is, if you put fire to it?

A. Yes, it would just blacken and char. Of course it will take the life out of it, you know; it will take the life out of the waste.

14 Q. If you burn it, if you char it?

A. Yes. We have waste that comes off of the gasoline upstairs and have to put kerosene on it to burn it, have to pour oil on it.

15 Q. You have tried to burn it without putting oil on it?

A. Yes, with the cleaning, the gasoline. After it has all been dressed and spun and then it passes through the gasoline, they have to do that. The dirt that is scraped off in the cleaning and out in

(Deposition of Fred Pearson.)

a pan in the gasoline room, that is taken down about every two weeks and taken into the yard and before they can burn it they have to pour kerosene oil on it and burn it right away. That is after it has passed through and been made into yarn. [154]

Cross-examination by Mr. KORTE.

16 Q. In what way would the heating of it affect the fiber, Mr. Pearson? You spoke something about the fiber being affected. Of course it heats and it macerates.

A. If it don't get overheated it wouldn't affect the fiber at all, if it only gets the ordinary drying. But if the man, as I say, gets the fan too hot.

17 Q. What is this fan? Is it to produce heat or is it a cooling process?

A. No. It is a drying process, to dry the waste after it has been washed. You are speaking of waste with the gum in?

18 Q. Yes. You have seen it in heaps like a manure pile, have you not? You have seen it heat and keep on heating?

A. No, it will get to about one certain amount and no more.

19 Q. And then dies down?

A. And then dies down, as the animal matter dies, then the heat will die.

20 Q. Now did you ever see it affect the fiber by that process? A. No, sir.

21 Q. You haven't?

A. Not to my knowledge. Of course, the fiber, after it has been wet, after the waste has been wet,

(Deposition of Fred Pearson.)

and then you take and boil it off, will be stained and discolored and the percentage then is not quite so good.

22 Q. Why?

A. Because it has—to a certain amount it has been macerated, the silk has been macerated to a certain amount, and some parts of it has and some parts of it hasn't. Then you have to take that and boil it a certain amount of time, because if you were to separate one part of it from the other and boil this so much less because this has macerated only such an amount and the other not at all,—you have to boil it [155] the same basis as if it had never been wet.

23 Q. How would that effect it?

A. You would lose in the dressing. The man that got that silk would lose money by it.

24 Q. Uneven maceration?

A. Uneven maceration, and—well, you could say it was damaged.

25 Q. How long, ordinarily, would it take to produce that condition? Say, for instance, waste silk has started to macerate, how many days thereafter would you get an uneven maceration?

A. It depends whether you are going to macerate some all the way through or not. If silk gets wet, as soon as ever it gets wet the maceration starts right in.

26 Q. The original process was maceration, was it not? That was the method by which they degummed the silk originally, it was maceration?

(Deposition of Fred Pearson.)

A. Yes. Some use four days, some use fourteen days. There is lots of people vary. Of course there is a certain class of silk that carries a heavier gum than others. It depends on the class of silk, how much you are going to degum.

27 Q. How much would you say you should allow Canton China to macerate?

A. Some use about eight days for that.

28 Q. Suppose it macerated longer than that, how would that effect the fiber?

A. Well, I think it would rot.

29 Q. It would rot the fiber? A. Yes.

30 Q. It would weaken it at least, would it not?

A. Yes, it would rot.

Redirect Examination by Mr. LYETH.

31 Q. If you kept the silk wet down, which had started to macerate, would that retard the maceration process? [156] A. If you kept it wet?

32 Q. Yes.

A. Always keep it wet while they are macerating. It is always kept wet while it is under maceration with a certain amount of steam, heat,—a certain amount of heat.

33 Q. I mean if they put water on it.

A. You keep it in water. It is submerged in water in the maceration.

34 Q. The original method of maceration, as I understand you to say, you keep the silk submerged in water? A. Yes.

35 Q. Well, now, if the silk were only damp and

(Deposition of Fred Pearson.)

left to dry naturally, would that accelerate the weakening of the fiber?

A. Oh, yes, it would weaken the fiber and, more than that, it would be stained, it would be badly stained, the silk would be badly stained.

Recross-examination by Mr. KORTE.

36 Q. In what way would the staining affect the fiber, Mr. Pearson?

A. Some would be red, yellow, and like that.

37 Q. I mean the fiber itself, its tensile strength.

A. Oh, it would weaken it.

38 Q. It would weaken it, the discoloration?

A. Yes, where it is discolored that wouldn't be as strong as the original.

Redirect Examination by Mr. LYETH.

39 Q. Have you ever tested out the strength of silk that has been discolored?

A. Well, not to put any particular test, but as experience teaches us right away what is the matter with the silk when we get it here. [157]

40 Q. Does the silk which has been wet, the silk waste which has been wet, heat as much as a manure pile, for instance?

A. Well, not quite. After a certain period of time the heat will go down.

41 Q. Where the silk is charred, as you spoke of, in the drying of it does that come from heat, external heat? That isn't produced by the silk itself?

A. No, that isn't produced by the silk itself.

(Deposition of Fred Pearson.)

42 Q. It is the heat from the fan?

A. It is the heat from the fan. That is from the negligence of the operator.

43 Q. Let the fan get too hot and the silk near it got very hot? A. Yes.

Deposition of Samuel H. Pearson, for Plaintiff.

And thereupon, to further prove the issue on the plaintiff's part, the deposition of SAMUEL H. PEARSON was introduced and read in evidence as follows:

1 Q. What is your occupation?

A. Superintendent silk spinning.

2 Q. In this factory, American Silk Spinning Company? A. Yes.

3 Q. How long have you held that position?

A. Seven years.

4 Q. How long have you been in the silk business, manufacturing of silk spun yarn?

A. Forty-two years.

5 Q. In this country?

A. No. Thirty-three years in this country.

6 Q. And the rest of the time?

A. In England. [158]

7 Q. Have you during that time handled Canton silk waste?

A. Yes, both before I came here and ever since.

8 Q. You have handled it all during your experience in the silk business? A. Yes, sir.

9 Q. How old are you, Mr. Pearson? A. 54.

10 Q. Have you had any experience with Canton

(Deposition of Samuel H. Pearson.)

steam waste which has been wet by salt water or fresh water? A. Yes.

11 Q. Many times? A. No, not many times.

12 Q. Will you state whether or not in your opinion Canton steam waste which has been wet can ignite by spontaneous combustion?

A. Not to my knowledge.

13 Q. Have you ever heard of it igniting?

A. No.

14 Q. —from spontaneous combustion, because it has been wet? A. No.

15 Q. Can you burn it?

A. Well, you can if you put kerosene oil or something else on, but I don't know that you could burn it without,—how you could. I don't think it can be burned unless it was a terrible fire or something like that. If the mill was on fire, why, it would be scorched, but to set fire to it I don't think you could do it unless there was something put to it to help it to burn.

16 Q. How does it act when it is wet?

A. Macerates, decomposes if it is left long enough.

17 Q. Decomposes the fiber?

A. Yes, rots it. [159]

Cross-examination by Mr. KORTE.

18 Q. How long would you have to allow it to macerate in order to rot the fiber?

A. Well, that would depend, I should think, a great deal in whereabouts it was, where it was.

(Deposition of Samuel H. Pearson.)

19 Q. Well, we will say it was submerged in water just like you would macerate in order to degum the original waste; how long would you have to leave it in water in order to rot the fiber?

A. Well, if it was left in water all the time, I don't know—I think that would take quite a long time to do that, to rot, you know. But if it was wet and then taken out and let the air strike it, that is when it begins to rot, you know.

20 Q. How soon after it comes out of the water?

A. I should think in a week's time it would begin and then it would go fast then, you know. You see after it once started it would go very fast.

21 Q. It would affect the fiber? A. Yes, sir.

22 Q. Now, if you had it saturated in water and then took it out in the air, it would start to heat, would it not, considerably?

A. Why, it would heat a little but never stay there. If it was taken out in the air and spread and left to dry and dry quickly, I don't think it would do any damage at all. I don't think so, unless it had been discolored.

23 Q. The salt water would discolor—saturated completely in salt water it would discolor?

A. That would discolor it and that would affect it.

24 Q. The discoloration affects the fiber itself?

A. Yes, sir.

25 Q. What per cent would you say the discoloration would affect the fiber, what percentage?

(Deposition of Samuel H. Pearson.)

A. That would depend a great deal on how long it had been in. [160]

26 Q. Say it had been in salt water ten days and then taken out in the air and opened up?

A. I wouldn't like to commit myself on that.

27 Q. Oh, just make a guess on that, give your best opinion, that is all I want.

A. Well, a great deal—I couldn't tell.

28 Q. Fifty per cent?

A. Yes, I should say so.

29 Q. 75 would it not?

A. Well, I would say fifty per cent at least.

Testimony of Charles B. Wheeldon, for Plaintiff.

And, to further prove the issue upon the part of the plaintiff, CHARLES B. WHEELDON was called as a witness, sworn, and gave the following testimony:

Q. (Mr. LYETH.) Captain Wheeldon, what is your occupation?

A. I am employed by the owners and underwriters to represent their interest in hulls and cargoes reported in distress, the object being to consult with the master and to minimize the expenses and get the vessel and cargo to destination as promptly as possible.

Q. Are you what they call a marine surveyor?

A. I suppose I would have that title. It is hard to give me any title. I do not know what I am myself. That is my work.

Q. When a vessel is in distress you go to the

(Testimony of Charles B. Wheeldon.)

port and endeavor to get the damaged cargo forward?

A. That is my mission, and when she is on shore to get her to port and then to get her cargo to destination.

Q. How long have you been engaged in that occupation? A. Twenty-five years. [161]

Q. What were you doing before that?

A. Master mariner.

Q. At sea? A. At sea.

Q. For how long? A. Twenty years.

Q. Have you had experience, Captain Wheeldon, with various kinds of cargoes that have been wet in wrecks?

A. Yes; that has naturally been my work. A vessel that is in trouble the cargo as a rule is wet, either on fire or stranded.

Q. What sort of cargoes have you had experience with?

A. Various cargoes; wheat, cotton, wool, general merchandise.

Q. How many such cargoes have you dealt with; roughly give us some idea of what experience you have had?

A. I don't know. I suppose I have been to 150 ships. I cannot recall that. I haven't any record of the number.

Q. Did you have anything to do with the cargo on the "Canada Maru" in August, 1918?

A. I did.

Q. What did you do?

(Testimony of Charles B. Wheeldon.)

A. I came from New York representing parties—

Q. (Interposing.) Your home is in New York?

A. Yes—representing parties that had the insurance of \$1,400,000.00 on the “Canada Maru,” consisting of silk, matting, wool, tobacco, and various other commodities.

Q. They were not principally interested in the cargo of silk waste that is the subject of this suit?

A. I don't think so. I don't know about that. I think that interest was represented out here by Mr. Taylor. My only interest there was that I was asked to consult with Mr. Taylor when I arrived and if I could be of any benefit to him to advise and consult with him. I did not have that direct,
[162]

Q. Did you or your principals consult with the various manufacturers of silk, with reference to the best method of handling the damaged silk which you expected would be on the “Canada Maru”?

Mr. KORTE.—I object to that unless he had personal knowledge of the subject.

A. Well, the only knowledge I have is the result of their inquiries that was given to me—the result of their inquiries from their consignees.

Q. What were your instructions?

A. The instructions were that the opinion of the consignees were—

Mr. KORTE.—I object to that as hearsay.

The COURT.—What were you told?

A. My instructions were to have the silk loaded

(Testimony of Charles B. Wheeldon.)

in refrigerator-cars and rushed East by the fastest train we could get. At that time it was supposed that the "Canada Maru's" holds had been submerged. The reports were very discouraging; being that one of the holds—No. 1 hold was full of water and No. 2 and No. 3 were filling, and we imagined that the shipment of silk were submerged, and it was in view of that that those instructions were given me. I might add that in a former case instructions were given under the same circumstances, on the "City of Rio de Janeiro," in the entrance to San Francisco harbor.

Q. And the conditions were the same?

A. The cargo was silk, and the instructions were to rush it through in refrigerator-cars.

Q. Why was it to be put in refrigerator-cars?

A. My idea of it was that that was to prevent the silk from heating further and spoiling the fiber or staple.

Q. Or was it the idea to keep it wet? [163]

A. The idea was to keep it wet and as cool as possible.

Q. Was any of your cargo damaged, the cargo which you represented?

A. I think 19 bales of silk waste. I have a notation—I notice there it is marked as wet and stained.

Q. Was any of the raw silk—

A. Very few bales of that were marked stained.

Q. So that you had no real difficulty with your silk? A. Not a bit.

(Testimony of Charles B. Wheeldon.)

Q. Did any of the other cargo which you represented—

A. (Interposing.) We had two hundred bales of wool; twenty-seven were jettisoned and 183 remained. That wool had been thoroughly submerged.

Q. Was that unloaded from the steamer?

A. That was unloaded from the steamer.

Q. Did that heat?

A. That heated. In fact, I might add, from my experience I have not seen any commodity that does not heat—when it gets wet it heats.

Q. They all heat? A. They all heat.

Q. Is there any danger of spontaneous combustion?

A. I have not seen it and I would like to have somebody advise me what the danger from spontaneous combustion is.

Mr. KORTE.—We will do that for you, Captain.

A. (Continuing.) I haven't found any commodity yet, and I have shipped a great many commodities and different ones, and I never yet had any trouble from spontaneous combustion.

Q. Have you shipped cotton?

A. In many bales.

Q. In railroad cars?

A. In railroad cars. [164]

Q. In the holds of steamers?

A. In the holds of steamers.

Q. And on deck? A. And on deck.

(Testimony of Charles B. Wheeldon.)

Q. Did you see the silk waste that is the subject of this suit? A. I did.

Q. When did you see it?

A. I don't know whether some was taken out—I was up there on the 7th when she arrived, and then she was pulling away from the dock, from the pier and went over to the drydock. I was up there again on the 9th, I think—I don't know whether a little was taken out then or not. I think it was the 12th, possibly, that there was a quantity on the dock.

Q. And you saw it then? A. I saw it then.

Q. What condition was it in—will you describe it?

A. It was thoroughly saturated, just as it was taken out of the hold, covered with beans and mustard seed and rice—not covered, but it was mixed with it, of course; it laid between two sheds; I don't know the numbers of the sheds, but it laid in the opening between the two sheds.

Q. Did you go down there with Mr. Taylor?

A. I did.

Q. When you arrived did you discuss with Mr. Taylor the best method of handling this silk waste?

A. I did. I suggested the method that had been suggested to me.

Q. Which was—

A. Which was refrigerator-cars and to keep it wet.

Q. And silk train service?

A. And silk train service.

(Testimony of Charles B. Wheeldon.)

Q. Did you accompany Mr. Taylor to the dock at Tacoma? A. I did. [165]

Q. Was that on the 12th?

A. Well, I don't remember the date. I know it happened sometime between the 7th when I was up there—I went up there with him the first time when she came back from the drydock.

Q. Were you present when he had a talk with Mr. Cheney?

A. I don't know who Mr. Cheney is, but I went with him to some office and talked with some officer. I would not know him if I would met him to-day.

Q. You heard the talk?

A. I heard him talk to some official regarding the refrigerator-cars.

Q. And what did you hear as to any arrangements made?

A. The understanding was that they were to furnish refrigerator-cars and ice them.

Q. And silk train service?

A. And silk train service. My impression is that the idea was that they were to go through with the other silk train.

Q. There was a silk train?

A. There was a silk train made up.

Q. That went forward, do you remember what time?

A. I cannot tell you that. I should say somewhere between the 15th and 20th. I left on the 20th.

Q. And that was made up of the raw silk that

(Testimony of Charles B. Wheeldon.)

was on the "Canada Maru"? A. Yes.

Q. Did you see the silk? Did you examine the silk at that time? A. I did.

Q. What was its condition? A. It was warm.

Q. Did you see it after that?

A. I saw it when it was loaded in the car, some of it.

Q. Were you down there?

A. I was down there every day, practically.

[166]

Q. When you saw it after the 12th, had they washed off the beans?

A. Yes; they had been playing water and washing it nearly every day.

Q. What was the condition with respect to heating?

A. It was still warm. I might add that I did not notice any particular heat there, because it was so slight compared with cotton and other things that was shipped, so that it didn't enter my mind that there was an unusual degree of heat.

Q. Did you see them load it in the refrigerator-cars? A. Yes.

Q. Did you go in the cars? A. I did.

Q. Did you feel the bales in the cars? A. Yes.

Q. What was the condition?

A. Well, it is my opinion that there was less heat there than there was outside. That might be due to the fact that it was out of the sun. That is what I attribute it to—that it laid between those two sheds and it was very warm, and when we got

(Testimony of Charles B. Wheeldon.)

in the car it felt to me cooler than outside.

Q. It was pretty hot outside in the sun?

A. It seemed to me so, between those two sheds, but I don't know the temperature.

Q. Did you feel into the bales?

A. I did, when it was on the dock, but not after it was in the car.

Q. How far in did you get?

A. I put my hand in on a bale that was broken up there.

Q. How far?

A. Perhaps six or eight inches.

Q. Did you notice any undue heat?

A. Not in my opinion.

Q. Was it hōt? A. It was hot, warm. [167]

Q. How does it compare with a bale of cotton wet?

A. You would not keep your hand on a bale of cotton that was wet; you would take it off very quickly, nor would you in a car of grain that was wet. You would not put your hand in there and keep it there.

Q. How many bales of wet cotton have you handled?

A. I suppose a hundred thousand, easily enough. I mean by handling—I mean by that that we have shipped them.

Q. What did you do with your wool?

A. Shipped it to San Francisco.

Q. On the "Canada Maru"?

A. Shipped it to San Francisco.

(Testimony of Charles B. Wheeldon.)

Q. Did anybody raise any question about spontaneous combustion? A. Not the least.

Q. Was it wet? A. It was wet.

Q. Was it heating? A. It was warm.

Q. How was it, compared with the silk waste.

A. I didn't notice any heat there that gave me any concern; any more than I did on the silk waste.

Q. Was it more or less than the silk waste?

A. I think about the same. I felt a little bit uneasy about the wool, because that was wool in grease and I didn't know whether it was going to—

Q. (Interposing.) You took a chance?

A. That went all right, and not even the railroad raised any question.

Q. Did you ever have the railroads raise any question? A. Never.

Q. (Continuing.) About wet cargoes?

A. Never. [168]

Q. Or spontaneous combustion? A. Never.

Q. Did you ever have any question raised about wet cotton going forward?

A. Well, I had questions raised from the masters of the ships who didn't know. After it was explained to them they withdrew that objection. I never had any refuse finally to take it.

Q. You had captains raise the question whether the cotton would take fire?

A. They seemed to have that idea, that because it is wet it must take fire, because it is warm it must take fire.

(Testimony of Charles B. Wheeldon.)

Q. Why didn't you have that condition in the past?

A. Well, we have what is issued as Lloyd's Almanac, which many of the British ships swear by, and in that there is a little note that tests and experience for years have shown that wet cotton will not take fire. After that is read to them they seem easier and let it go.

Q. Have you ever had any evidence or any case of spontaneous combustion from wet cargoes of animal or vegetable nature? A. Never, never.

Q. How many refrigerator-cars had been loaded with the silk waste when you saw it?

A. To the best of my recollection there were two and a part of a third. I would not be sure of that. I know that I went into one when it was loaded, because Mr. Taylor and myself had suggested or discussed the advisability of putting a strip of wood between those bales of silk, and I went into one car and I think that there were two loaded, or it might have been one and this was the second. [169]

Q. Were they actually putting in those pieces of wood as you suggested? A. Yes.

Q. You got in there to see it? A. Yes.

Q. What kind of pieces of wood were they using?

A. I think they were two-inch scantling, nothing thicker than that between the bales.

Q. Between each tier of bales?

A. Between each tier of bales; not right over the bales, you understand; a narrow piece of scant-

(Testimony of Charles B. Wheeldon.)

ling that ran from side to side of the car under the tier of bales.

Q. Supporting them? A. Supporting them.

Q. Do you know whether the silk was unloaded or not in those refrigerator-cars?

A. No, I don't know anything about that.

Mr. LYETH.—That is all.

Cross-examination.

Q. (Mr. KORTE.) You spoke of 37 bales of wool that were jettisoned—how did that come about?

A. Well, they jettisoned—if you are familiar with the case—quite a considerable cargo down at Cape Flattery to lighten the ship.

Q. The remaining part of the wool went to San Francisco on the boat, piled up on the outside of the deck?

A. Yes, sir, and I will tell you how that was.
[170]

Q. I just wanted to know the facts.

A. We had the advice of the W.—O.

Q. You mean the O. & W.?

A. No—of the Holman, Hart Mill, the wool expert in San Francisco, not to ship by rail as there was great congestion.

Q. Anyway, it was shipped in that condition, outside on the deck? A. Yes.

Q. In the open? A. And that was the reason.

Q. And you know that cotton is about the only material that will not burn by spontaneous combustion? A. Corn won't burn.

Q. It will char?

(Testimony of Charles B. Wheeldon.)

A. I don't know. I have shipped carloads of it and—

Q. Did you ever see it char?

A. No, I have shipped wheat.

Q. And you haven't heard of corn charring?

A. It might char, but not burn.

Q. Well, what is charring but burning—what is the chemical difference?

A. You are getting on the chemical and scientific—

Q. You say it won't burn?

A. I am speaking from the practical point of view.

Q. You would not say that when it is charring it was not burning—you mean that it won't flame?

A. I have never seen it char.

Q. But as I said, cotton is about the only thing that you can ship wet which will not char or inflame?

A. You can ship wool and you can ship cotton and grain.

Q. Wool will burn or char.

Mr. LYETH.—Are you testifying, Mr. Korte?

Mr. KORTE.—I am trying to get the witness to confine [171] himself to my questions.

Q. Wool will burn?

A. I don't know. I have never had any of it spontaneously—

Q. You can't say whether wool will burn or not?

A. I never had a commodity yet that took fire from spontaneous combustion.

(Testimony of Charles B. Wheeldon.)

Q. But with all of the commodities that you have listed in the little book which you just recited or which you read to the men on the boat, the only one there is cotton that won't burn?

A. That is all, because that is applicable to the Texas trade where those boats are trading.

Q. You never heard of hay burning by spontaneous combustion? A. I have not.

Q. Or horse manure?

A. I have not. I have seen cars of it loaded on a siding but never burning.

Q. Usually they transport it only a short distance in open cars? A. I don't know.

Q. You never saw it in boxcars? A. No, sir.

Q. But in order to ship this, you say then that it would require wetting down?

A. I suppose it would. I don't lay so much stress on the wetting down as I do trying to keep the temperature down.

Q. And the purpose of that is to keep the heat down?

A. To keep the heat down and to keep the fiber from disintegrating, the same as with cotton.

Q. And it laid out there in the ocean fourteen days, as the ship's log shows it was fourteen days in the water?

A. No. She stranded on July 30th and floated on the 5th.

Q. The log shows that she stranded July 30th and she came into the dock on the 10th? [172]

(Testimony of Charles B. Wheeldon.)

A. No; she came in on the 7th first and then went to the drydock.

Q. She came in on the 7th and went to drydock on the 10th and then came back to the Tacoma dock on the 11th and started unloading on the 12th, or started unloading cargo then. So, there is a period of fourteen days, from the 30th to the 12th, that that cargo was under water, saturated with sea water all of the time, possibly sometimes full and sometimes not—it would be pretty apt to attack the fiber under those conditions, wouldn't it?

A. I can't speak for silk particularly; I can say that we have cotton under water a year and the fiber is not hurt at all. I think if we could have kept this silk under water until it reached New York, there would be no damage.

Q. You know that there is no comparison between cotton and wool or silk—the two are entirely different?

A. I don't know what the difference between them is regarding spontaneous combustion—I don't know that there is any, personally.

And thereupon it was **STIPULATED** by the parties as follows:

Mr. KORTE.—I will dictate a stipulation to the record. It is stipulated that if Mr. Lownes were present, whose deposition was read yesterday, he would testify that he received the four bills of lading with the endorsements as shown on the bills of lading, on the 7th day of August, 1918. Mr. Lyeth desired that concession.

Mr. LYETH.—I omitted to ask Mr. Lownes that question when his deposition was taken. [173]

The COURT.—The date of this alleged shipment was the 12th of August?

Mr. LYETH.—The 12th of August.

Deposition of Dr. Arthur D. Little, for Plaintiff.

And thereupon, to further prove the issue on the part of the plaintiff, the deposition of DR. ARTHUR D. LITTLE was introduced and read in evidence, as follows:

(By Mr. LYETH.)

Q. Will you give your full name and address, Dr. Little?

A. Arthur D. Little, 30 Charles River Road, Cambridge, Massachusetts.

Q. Your age? A. Fifty-seven.

Q. What is your occupation?

A. Chemist and Chemical Engineer.

Q. Are you President of Arthur D. Little, Incorporated? A. I am.

Q. Will you state for the record, Dr. Little, your experience as a chemist and chemical engineer?

Mr. KORTE.—Unless you want it in the record I concede the doctor's competency along that line.

Mr. LYETH.—I think I would like it.

A. I studied chemistry at the Massachusetts Institute of Technology and received the degree of Doctor of Chemistry from the University of Pittsburgh. I have been in general practice as chemist and chemical engineer in Boston since 1886 and have

(Deposition of Dr. Arthur D. Little.)

during that period had a very extended contact and experience with industrial applications of chemistry. I served two years as president of the American Chemical Society and also served [174] as president of the American Institute of Chemical Engineers. I am a member of the corporation of the Massachusetts Institute of Technology and Chairman on the departments of chemistry and chemical engineering, and I founded there the School of Chemical Engineering Practice. I am a member of the Executive Committee of the Research Corporation and of Committees of the National Research Counsel, and during the war was consultant to the Chemical Warfare Service and Signal Corps and was called upon to advise the Navy Department and other Government departments on chemical matters. I have had a particularly wide experience in connection with fibers and methods involving their treatment, preparation and use.

Q. Have you been chemist to textile concerns, textile mills?

A. I have been chemist to very many mills employed in the manufacture of textiles and other products from fibrous raw materials.

Q. Have you investigated cases of spontaneous combustion and are you familiar with those phenomena? A. I have and am.

Q. Are you familiar, Dr. Little, with what is known as Canton steam silk waste, known as No. 1 and No. 2 grades? A. I am.

Q. Will you state whether or not, in your opinion,

(Deposition of Dr. Arthur D. Little.)

Canton steam silk waste of either of these grades, when wet with sea water, is anyway liable to ignite from spontaneous combustion?

A. In my opinion, it is not.

Q. Will you describe the chemical action that takes place when Canton steam silk waste is wet with sea water?

A. The action taking place is not, strictly speaking, chemical. The waste always contains some bacteria, and as a result of their life processes fermentation may occur, and this, of course, always involves some chemical change. [175]

Q. What is the effect of fermentation?

A. It commonly results in a moderate rise in temperature and a gradual breaking down of the sericin or silk glue, with development of ammonia.

Q. Is it possible for sufficient heat to be developed by fermentation to cause any danger of spontaneous combustion or ignition in the material?

A. In my opinion, it is not.

Q. Will you explain the difference, Dr. Little, between fermentation and exothermic reaction?

A. Fermentation is the result of the life processes of animal or vegetable organisms and can only proceed under ordinary conditions while these are alive and functioning. Few if any of them can survive for any considerable period of time temperatures much if any above 212° Fahrenheit, and upon their death the fermentation and the results therefrom must necessarily cease. This temperature is, of course, far below that required to induce spon-

(Deposition of Dr. Arthur D. Little.)

taneous combustion. In some cases, however, as for example, that of dirty rags impregnated with an oxidizable oil, fermentation may set in if the material is damp or wet and be responsible for an initial rise in temperature. Such increase in temperature due to fermentation must, however, presently cease by reason of the death of the organisms responsible therefor. We have, however, here a new factor because of the well known tendency of certain vegetable oils, like linseed oil, to absorb oxygen, this absorption being attended by the evolution of heat. If the material thus heating is in sufficient volume or otherwise so placed that there is not a ready loss of heat through conduction or radiation, the temperature of the material rises and the tendency to oxidation accelerates as the temperature goes up, with the result that higher [176] and higher temperatures are reached and ultimately a temperature sufficient to cause ignition. This process is one occurring in many materials and is generally known under the name of spontaneous combustion. The point which I would particularly make, however, is that it is not due to fermentation but to the chemical action superadded to the effects of fermentation.

Q. Is there present in Canton steam silk waste such an oxidizing oil as you have described?

A. No.

Q. What is the explanation of fires which are known to frequently occur in coal which has been wet?

(Deposition of Dr. Arthur D. Little.)

A. There is perhaps no universally accepted theory for the cause of such fires, but that which finds most general acceptance is that the heating up is due to the slow oxidation of sulphur compounds—perhaps more generally sulphites of iron—contained in the coal.

Q. Is there any sulphur in the Canton steam silk waste? A. No.

Q. Is there any chemical action other than fermentation which could take place in wet silk waste which would produce heat or any reaction that could be superadded to fermentation?

A. None that I know of; nor do I believe that any such would take place.

Q. Assume, Dr. Little, that a cargo of 500 bales of No. 1 Canton steam silk waste and 367 bales of No. 2 Canton steam silk waste had been stowed in the hold of a steamer which had stranded in Puget Sound, causing the hold in which the silk waste was stowed to become flooded and that this stranding occurred on or about August 1, 1918; that the steamer was thereafter floated and that the silk waste unloaded on open [177] wharves at Tacoma, Washington, from August 7 to August 10, and that it had been wet down with a hose while on the wharf; and assume further that it had been loaded in refrigerator-cars and had been transported across the continent to Providence, Rhode Island, by what is known as silk train service, occupying about six days, and that the silk had arrived at Providence between August 21 and August 30, a period of from

(Deposition of Dr. Arthur D. Little.)

three to four weeks since the original wetting,—will you state whether or not, in your opinion, there would have been any danger whatever of excessive heating or of spontaneous combustion in that cargo?

A. In my opinion, there would have been neither.

Q. Are there many articles of commerce commonly transported by railroads of an animal or vegetable origin which are known to heat when wet and which are in no way dangerous due to excessive heating or liability to spontaneous combustion?

(Objected to as immaterial and irrelevant.)

A. There are.

Q. Will you enumerate some of them?

A. Cotton; stable manure; wood pulp.

Q. Would a stable or horse manure, in your opinion, heat to a greater extent than steam silk waste?

A. It is very much more liable to heating and will heat up faster. It will presumably go to a higher temperature by reason of its larger proportion of fermentable material, and vastly greater content of fermenting organisms.

Q. Is there any danger of spontaneous combustion? A. There is none, in my opinion.

Q. Have you ever heard of its catching fire?

A. I never have, and it is not commonly regarded as liable to do so.

Q. And it is an article of commerce commonly shipped by railroads?

A. Commonly shipped by railroads, largely stored in cities and in wooden structures generally. [178]

(Deposition of Dr. Arthur D. Little.)

Q. Any danger of spontaneous combustion in wood pulp when wet?

A. No, wood pulp is very commonly indeed shipped wet, not only by railroads but in wooden sailing vessels.

Q. Does it heat from fermentation?

A. I cannot say that it doesn't, but such heating has seldom or never been brought to my attention.

Q. What about the raw material used in the manufacture of cordage—whether or not the manila fibers are liable to heating when wet?

A. They are, and one of the usual methods of preparing such fibres for use involves such heating through fermentation as is known as "batching." Vast quantities of cordage fibres are treated in this way, as, for example, in the great plant of the American Manufacturing Company, located in Brooklyn.

Q. Are you the chemist for that company?

A. I was their chemist for three years and was chemist for many years for the Plymouth Cordage Company.

Q. Are the manila and sisal fibres inoculated to promote fermentation in the process of manufacture? A. They are in some cases.

Q. Is there any danger of spontaneous combustion from the heating produced in those fibres?

A. I have never known or heard of a case of ignition of such material attributed to spontaneous combustion.

(Deposition of Dr. Arthur D. Little.)

Q. What about the waste vegetable matter in the manufacture of sugar from sugar cane?

A. The cane after going through the crushing rolls of the centrale still contains about one-eighth of its original proportion of sugar, and as the extraction is carried on in tropical or semi-tropical countries the conditions of temperature are peculiarly favorable to fermentation, and this waste, known as bagasse, is particularly liable to fermentation. [179] It is commonly burned almost immediately under the boilers, but if for any reason the amount of waste produced is greater than the immediate requirements of the boilers, it is common practice to load the bagasse on to cars and hold it until the boilers are ready to receive it. I have never known of a case of spontaneous combustion in bagasse, although I have made particular inquiry concerning this. I may say that I am Research Director for the United Fruit Company, operating great sugar plants in Cuba.

Q. And have you conducted experiments with bagasse?

A. We have conducted a great many experiments with bagasse, but not with this particular point in mind; and we have built a paper-mill in Hawaii to work up bagasse into paper, and in this mill great quantities of wet bagasse are stored.

Q. Does it by any means follow, Dr. Little, that because animal or vegetable matter is heating there is any danger of spontaneous combustion?

A. It does not.

(Deposition of Dr. Arthur D. Little.)

Q. To a person having experience in handling commodities and cargoes ordinarily shipped on railroads in the United States, is there any reasonable justification for assuming that because a cargo of Canton steam silk waste which has been wet with sea water is heating to a certain degree and giving off ammonia—in assuming that the cargo is dangerous or liable to spontaneous combustion if transported?

And to that question the counsel for the defendant objected, on the ground that it called for an opinion as to the ultimate facts to be passed upon by the Court, and did not call for an opinion upon a matter provable by the testimony of an expert witness, and on the further ground that the witness is not qualified to testify as an expert in answer to that question.

The witness was permitted to answer the question, as follows: [180]

A. In my opinion, there is none, both for the reason that silk waste is well known not to be subject to spontaneous combustion, and for the further fact that the ammonia evolved is in itself an efficient fire extinguisher.

And the defendant excepted to the ruling of the Court admitting said answer in evidence, and his exception was allowed.

Referring to my hypothetical question regarding the cargo of 500 bales of No. 1 steam silk waste and 367 bales of No. 2 Canton steam silk waste, assume that the cargo was unloaded on to the open dock at

(Deposition of Dr. Arthur D. Little.)

Tacoma, Washington, and that it began to heat, give off ammonia fumes, and that it was wet down by hose and that part of the cargo had been loaded into refrigerator-cars which were to be iced during transit across the continent,—will you state whether or not, in your opinion, there would be any reasonable grounds for assuming that the cargo was dangerous or in any way liable to spontaneous combustion?

Mr. KORTE.—I make the same objections to this question I made to the previous one.

A. In my opinion there were no reasonable grounds for such assumption.

Q. Would the icing of the refrigerator-cars in which the silk waste was to be stowed tend to check or accelerate fermentation?

A. Check it—or at least to inhibit it.

(Conference between counsel.)

Mr. KORTE.—Subject to objection of immateriality. The questions which counsel now propound to the witness may be asked.

Mr. LYETH.—It being understood that if the rules that are to be inquired about are not applicable, the questions and answers may be stricken out.

Mr. KORTE.—Yes.

Mr. LYETH.—On consent.

Mr. KORTE.—It is all right. [181]

Q. Are you familiar with the commodities generally classed as textile waste? A. I am.

Q. What does that term include?

(Deposition of Dr. Arthur D. Little.)

A. Wastes from the operations of spinning and weaving in the textile mill.

Q. That is, you mean the sweepings and waste products that occur in the manufacture of the raw materials in this country?

A. Into the finished products?

Q. Into the finished products. A. Yes.

Q. Does Canton steam silk waste come under such a term? A. I should not so regard it.

Q. Has that article been manufactured in any way? A. It has not.

Q. I show you pamphlet entitled:

“INTERSTATE COMMERCE COMMISSION.
REGULATIONS FOR THE TRANSPORTATION OF EXPLOSIVES AND OTHER DANGEROUS ARTICLES BY FREIGHT,”
dated September, 1918, page 49 thereof, article 1801, regarding “Forbidden Articles.” Subsection (d) reading as follows:

“Rags or cotton waste oily with more than 5 per cent of vegetable or animal oil, or wet rags, or wet textile waste, or wet paper stock,”
and ask you whether Canton steam silk waste could properly or reasonably be classified under any of these words?

And to that question the defendant objected, and notwithstanding his objection, the witness was permitted to answer as follows:

A. It is certainly not to be classified as rags or cotton waste oily with more than five per cent of vegetable or animal oil, since the Canton steam

(Deposition of Dr. Arthur D. Little.)

silk waste contains practically no oil and has moreover not been processed in any such sense as rags or cotton waste. Neither can it be classed as wet rags or wet paper [182] stock, nor as wet textile waste, for the reason in the latter case that it bears the same relation to cotton or other textile waste that raw cotton or cotton linters bear to the waste of the textile mill. It is in fact, although called a waste, a valuable and well recognized raw material for an important manufacture.

And to the admission of said testimony the defendant excepted and his exception was allowed by the Court.

Q. What is the commodity you referred to as cotton linters?

A. In the operation of ginning cotton there is left behind a certain proportion of shorter fibre, which, when separated from the seed, is known as linters.

Q. What is the Canton steam silk waste?

A. Canton steam silk waste is the product of the initial treatment of the cocoons in China and consists of pierced cocoons or material which otherwise cannot be drawn off into filature.

Q. Is filature the long strands ordinarily known as raw silk? A. It is.

Q. Which is manufactured by the throwsters?

A. It is.

Q. Does the Canton steam silk waste bear the same relation to raw silk as cotton linters bear to raw cotton? In my question I am excluding the

(Deposition of Dr. Arthur D. Little.)

commodity known as pierced cocoons.

A. It does in a general sense, although of course such analogies cannot be pushed too far.

Q. Does the silk waste contain the shorter fibres produced from the cocoons which cannot be used by the throwsters as raw silk? A. It does.

Q. Does the Canton steam silk waste contain generally the same chemical materials as raw silk or filatures?

A. It does; it is the same material chemically.
[183]

Cross-examination by Mr. KORTE.

Q. You spoke of fermentation and exothermic action, Doctor? A. Yes.

Q. I didn't quite understand the exothermic action, what relation that has to organic matter?

A. An exothermic reaction is one which evolves heat during and as a result of the chemical changes taking place. The reactions involved in ordinary combustion are exothermic reactions.

Q. In what kind of organic matter or material?

A. In the burning of wood and coal, for example.

Q. Is there exothermic action connected with the fermentation of silk waste?

A. The development of heat during fermentation is due to the reactions induced by the life processes of the animal or vegetable organisms responsible for the fermentation, and I would not class these as exothermic chemical reactions in the usual sense. They do, of course, develop heat.

Q. What, then, would be the highest degree of

(Deposition of Dr. Arthur D. Little.)

heat which the silk bale would attain under fermentation alone without any exothermic reaction?

A. The limiting temperature would be that at which the organisms are killed, and this would be not much above 212 degrees.

Q. Could you hold your hand on the bales at that heat, or would it be too severe?

A. You couldn't hold your hand at such maximum temperature for more than a very brief period of time.

Q. It would be difficult or almost impossible to handle a bale that was heated to that extent?

A. The temperature within the bale would presumably be higher than at the surface, but if the temperature at the surface approached this maximum, the bale could not be handled except by hooks or mechanically. [184]

Q. Now, if the degree of heat was greater than 212 you would necessarily conclude that the waste silk had been exposed to some other organic matter which was producing the heat?

A. If the temperature rose substantially above 212 degrees I would assume that the higher temperature was the result of chemical rather than fermentative action.

Q. What products would be apt to produce that chemical action that you might say was possibly present?

A. If the silk waste had been saturated or contaminated with a vegetable drying oil as, for example, linseed oil, that would be sufficient to ac-

(Deposition of Dr. Arthur D. Little.)

count for a notable increase in a temperature above 212 degrees.

Q. If there was any danger from shipping the cargo in the condition which has been named to you, there would be no necessity of icing it, would there, in so far as spontaneous ignition is involved?

A. There would not, for that reason.

Q. What gases and fumes would be thrown off in the fermentation of the waste bales?

A. Ammonia in large amounts, some carbonic acid gas, and perhaps others.

Q. Are they inflammable or poisonous?

A. They are not inflammable. Ammonia, if inhaled in sufficient quantity, would be poisonous, but fortunately it is so extremely pungent that it gives ample warning of its presence and cannot ordinarily be inhaled in poisonous quantities.

Q. You could inhale sufficient, though, to overcome one coming in contact with it?

A. If he were locked in the car or could not otherwise get away.

Q. But he may be overcome before he could get away, is the probability in coming in contact with gas of fumes of that kind?

A. I would not think so under the conditions predicated. [185]

Q. Of course, Doctor, you are testifying from the viewpoint of your technical knowledge, and right here (without waiving my objections to the question put to the Doctor relative to whether or not there is any reasonable belief in the person who

(Deposition of Dr. Arthur D. Little.)

rejected a shipment that he should have rejected it); would your answer be different if you had not had that technical knowledge and were an ordinary layman in dealing with the subject under the conditions of a cargo of waste silk saturated with sea water, fuming profusely, smoking, hot to the extent that you could not place your hand in the bale and keep it there any time whatever—that that particular commodity or freight was fit for shipment, to be handled by men?

Mr. LYETH.—I object to the question, as it predicates facts that have not been shown to be existent and does not state correctly facts which actually did exist.

Q. You may assume, Doctor, the facts which I have stated to you as true.

A. I am testifying not only from my technical knowledge but from my general knowledge and keeping always in mind matters of common knowledge, such, for example, as the tendency of materials like stable manure to ferment and their freedom from danger of spontaneous combustion, and the general knowledge in the silk and insurance businesses that silk waste is not liable to spontaneous combustion, and from these considerations and the knowledge derived from such sources, as well as from my technical knowledge, I would regard to material as certainly quite as fit for shipment as, for example, a car of steaming stable manure.

Q. Now place yourself, Doctor, in the position of

(Deposition of Dr. Arthur D. Little.)

the freight agent who had to do with this shipment; you had no knowledge of the compounds of silk waste or what it was, no knowledge of chemistry, of course, or bacteriology, and you saw this condition with the silk waste being saturated, fermenting, and, as I [186] said, fuming to the extent it looked like smoke and had all the appearances to the common ordinary person that it was heating to the point of burning,—would you under those conditions take the position you now take as a chemist, or would you have rejected the shipment as unfit to carry?

Mr. LYETH.—Do you refer, Mr. Korte, to the freight claim agent or the assistant freight claim agent?

Mr. KORTE.—Yes, the man, whoever it was, who dealt with it; the ordinary layman, as I have described.

Mr. LYETH.—I object to the question in so far as it described the condition of the bales as heating to the point of burning, and in other respects as not stating correctly the facts.

Q. You understand my question?

A. I have had considerable experience with railroads and with railroad officials. I was in fact—

Q. Well, now, Doctor, can you answer that without chastising some railroad official?

A. I wasn't going to chastise him; I was going to give him a boquet. I was in fact chemist to the Canadian Pacific Railway and made very extensive trips over its lines, and my estimate of the

(Deposition of Dr. Arthur D. Little.)

mental capacity and knowledge of their business possessed by railway freight agents and their familiarity with the general characteristics of materials offered for freight would lead me to believe that an agent to whom a valuable shipment of common material were thus presented would be and should be expected to possess the common knowledge of its relations to spontaneous combustion. [187]

Q. You are limiting your answers, are you not, Doctor, in stating spontaneous combustion, to a flame or ignition—to that extent? A. I am.

Q. Yes. We have, then, this situation—and this is confined strictly to the cross-examination on your answer to the hypothetical question that an ordinary person would have no reason to reject a shipment under those conditions—three chemists learned in the profession, maintaining that there was danger to life and property if that shipment went forward; on the other hand, we have three or four other chemists, including yourself, just as learned, who maintain there was no danger. Under those conditions, would an ordinary scrub freight agent who has no knowledge be blamed for taking one or the other positions when your own profession disagree on the subject? Now, assuming that is the situation, you would hardly blame him, would you, Doctor?

A. He might very well be in doubt under those circumstances.

Mr. LYETH.—I wish to enter an objection to the

(Deposition of Dr. Arthur D. Little.)

assumption of fact that it is not shown and does not exist.

Mr. KORTE.—Well, of course, the situation will be shown.

Q. You mentioned, Doctor, linseed oil as a matter which would produce exothermic and chemical reaction. Can you name any other oil that might produce the same reaction?

A. Cottonseed oil in a less degree.

Q. Cocoanut oil?

A. Any drying oil. Cocoanut oil is not commonly regarded as a drying oil, and I am inclined to think it should not be so classed.

Mr. KORTE.—You put in that set of rules in case they are material. I would like to have them in myself. They can go in as a part of the [188] record and if they have anything to do with the case they either go in or stay out, if you don't mind.

(Pamphlet entitled "Interstate Commerce Commission Regulations for the Transportation of Explosives and other Dangerous Articles by Freight," marked "A for Identification. Frank H. Burt, Notary Public.")

Redirect Examination by Mr. LYETH.

Q. Dr. Little, you were asked to assume that the maximum temperature of the bales was 212 degrees, and whether or not it could be handled by a man with the hands. Will you state from your experience whether or not it would be possible for a bale

(Deposition of Dr. Arthur D. Little.)

of Canton steam silk waste of the usual size, containing approximately 133 pounds, which had been wet with salt water, to attain on the outside any such temperature as 212°?

A. I do not believe that it could attain such temperature, partly by reason of the presence of the salt water and the large amount of heat which would be absorbed by the steam necessarily generated at that temperature, or even below it, and the opportunity for radiation from the outside of the bale.

Q. (By Mr. KORTE.) That is a single bale you are speaking of now?

A. Yes, exposed to the air.

Q. (By Mr. LYETH.) Would the bales of steam silk waste referred to in my hypothetical question, in your opinion, contain as high a temperature from fermentation as 212°?

A. I do not believe so, and in our own experiments at this laboratory we were unable to obtain such temperatures.

Q. Would the steam silk waste heat as much as stable manure? A. It would not.

Q. Would the bales of wet silk waste referred to in my hypothetical question attain a degree of heat that would render it impossible [189] to handle them, in your opinion?

A. I can see no possibility of its attaining such temperature and find it difficult to believe that such temperature was in fact attained.

Q. Assume in addition to the facts set forth in

(Deposition of Dr. Arthur D. Little.)

my hypothetical question that in the same hold of the ship there had been stowed beans and rice, and that when the bales were unloaded from the ship there were beans and rice sticking to the straw surrounding the bales,—would that, in your opinion, affect the heating to any material extent so as to increase the heat? A. Not materially.

Q. What effect would the wetting down of the bales by hose while on the wharf have?

Mr. KORTE.—In fresh water or salt water?

Mr. LYETH.—I assume that it was fresh water.

A. The effect of either fresh or salt water would be to lower the temperature of any portions of the bale to which the water penetrated, and of course to immediately lower the surface temperature, which would become substantially that of the water for the time being.

Q. Could the ammonia fumes coming off the bales of wet silk waste such as I have described in my hypothetical question have been regarded in any way as poisonous to men handling them and loading them on cars?

Mr. KORTE.—I think he answered that very fully.

A. I think it altogether improbable. We have operated in our basement on a semicommercial scale processes which charged the atmosphere of the room with ammonia vapors, with no ill effects at all to those engaged upon the work.

Q. Were those ammonia fumes the product of fermentation? A. They were not.

(Deposition of Dr. Arthur D. Little.)

Q. (By Mr. KORTE.) Then it would depend upon one's olfactory nerves, [190] would it not, Doctor,—Some are more sensitive than others?

A. Is that a question?

Q. Yes.

A. No. My position is that an atmosphere containing a dangerous or poisonous amount of ammonia would be so unpleasant that the men would not work in it.

Q. (By Mr. LYETH.) Would the fact that approximately three carloads of this silk waste under the conditions that I have assumed in my hypothetical question had been loaded on refrigerator-cars at the time that the freight claim agent ordered that they be not shipped, indicate to you whether or not the fumes of the ammonia were dangerous or not, and assuming, of course, that they were out on an open wharf?

The WITNESS. (To the stenographer.) Read the question.

(Question read.)

A. If I understand your question, the fact that the cars were loaded simply shows that at the time when the bales were introduced into the cars the amount of ammonia gas evolved was not sufficient to prevent the workmen from handling the bales. The fact that the cars were refrigerator-cars, if I am right in assuming them to be iced at the time, justifies the assumption that the fermentation was rendered less active by the lowering of temperature.

(Deposition of Dr. Arthur D. Little.)

Q. Assume, Dr. Little, the conditions that I have outlined in my hypothetical question on direct examination up to the time that the bales of silk waste had been standing on the dock for several days and had been wet down with a hose, and further than approximately half of the cargo had been loaded in refrigerator-cars, some three cars having been loaded; and assume further that the assistant freight claim agent of the defendant railroad—Chicago, Milwaukee & St. Paul—had at that time directed that the cars be unloaded and that the cargo be not shipped. [191] unless frozen or dried,—whether or not, in your opinion, from your general experience, such freight claim agent was reasonably justified in assuming that the cargo was dangerous or liable to spontaneous combustion—and assume further that it was intended that the refrigerator-cars be iced as soon as loaded.

And to that question the defendant objected, for the reason that it calls for an opinion upon the ultimate facts in this case and an opinion which an expert cannot be permitted to express, and is, therefore, incompetent; but, notwithstanding said objection, the witness was permitted to answer as follows:

A. I do not think he would be so justified.

And to the admission of that testimony the defendant excepted and his exception was allowed by the Court.

Q. Whether or not a freight claim agent of such a road ought to have known the commodity known

(Deposition of Dr. Arthur D. Little.)

as Canton steam silk waste with its relation to the possible danger of spontaneous combustion?

And to that question the defendant excepted for the reason that it calls for an opinion upon a man's mentality; but, notwithstanding said objection, the witness was permitted to answer, as follows.

A. Canton steam silk waste is a commodity of such well known character and frequent shipment and commercial value that those engaged in its transportation, and particularly the freight agents of transcontinental railroads, by which such material is commonly transported, might, it seems to me, in my opinion, be properly assumed to possess the general knowledge of its properties and characteristics as regards any tendency to spontaneous combustion. In other words, they should know that it is commonly recognized that it has no such tendency.

And to the admission of that testimony the defendant excepted and his exception was allowed by the Court.

Recross-examination by Mr. KORTE.

Q. Well, suppose, Doctor, another person, a marine surveyor, had examined the cargo and he pronounced it unfit for shipment— [192] would you criticise his judgment from the layman's standpoint he ordered to reject it, we will say?

A. I am not able to call up any mental picture of a marine surveyor, as I never happen to have met one and am not familiar with his duties or the requiremets of his position.

(Deposition of Dr. Arthur D. Little.)

Q. His duties are to, examine all cargoes as to their fitness or unfitness for shipment. That is his special business and he is constantly at that work all the time. Now, he passes on it and says "Unfit for shipment" from an examination such as you would make with the naked eye and with the hands, and so forth.

A. I should suppose that a man so qualified as such an inspector at a Pacific Coast terminal, where raw silk and silk waste are a common and important article of import, would be expected to know or at least to inform himself as to the characteristics of the material, and that if he rejected it as you state—

Q. Yes.

A. —he did so on ignorance of its character as commonly recognized.

Q. You would give his judgment, though, consideration if you were a carrier, if he passed on it, would you not? It would be worthy of consideration in that viewpoint—strictly from that viewpoint, Doctor?

A. If he were in my employ and assigned to that job I would certainly give consideration to his opinion until I had found that he was making mistakes of that sort.

Q. Yes. And if, further than that, a chemist had made a visual inspection of the commodity as it then existed—now assuming not from his hypothetical question to you, but a chemist made a visual inspection of the cargo as it was tendered to

(Deposition of Dr. Arthur D. Little.)

the Railway Company,—would you give his judgment consideration—and he had said it should not be moved, as it was dangerous to life and property?
[193]

A. I would, but I would at the same time point out that here is a difference and sometimes a profound difference in the weight which may properly be attached to the opinion of different chemists.

Mr. KORTE.—Well, we will say that he was a man of ordinary experience, intelligent in his profession, such as we find in the doctor's profession and the lawyer's profession. There are some lawyers that are better than others. That is all, Doctor.

Deposition of Edward A. Barrier, for Plaintiff.

And to further prove the issue on the plaintiff's part, the deposition of EDWARD A. BARRIER was introduced and read in evidence as follows:

(By Mr. LYETH.)

Q. Will you give your full name and residence, Mr. Barrier?

A. Edward A. Barrier; 18 Center Street, Cambridge, Massachusetts.

Q. Your age? A. Thirty-six.

Q. What is your occupation?

A. I am Assistant Chief Engineer of the Inspection Department, Associated Factory Mutual Fire Insurance Companies.

Q. Are you a chemical engineer?

A. I am a chemical engineer, graduate of the

(Deposition of Edward A. Barrier.)
class of 1905, Massachusetts Institute of Technology.

Q. What has been your experience in chemical work since graduating from Technology?

A. Following my graduation I was assistant instructor in chemistry in the Institute of Technology for one year. The year following that I was instructor in the University of Cincinnati for one year. [194]

Q. In chemistry?

A. In chemistry. And since that time, 1907, I have held various positions with the organization that I am now connected with, first as chemical engineer, and then director of laboratories and more recently assistant chief engineer.

Q. Will you describe briefly the organization with which you are connected and what its purpose is?

A. There is an association of twenty factory mutual insurance companies who have combined in forming an inspection department, whose duties are, first, inspection of property and adjustment of losses, and also all questions relating to fire protection and engineering study; and the department maintains laboratories which concern themselves with the study of fire protection devices and study of causes of fires and methods of preventing fires. In other words, the organization makes a special scientific study of all matters, causes and ways of preventing fires, gaining much of their experience from actual experience in the field. Every fire of

(Deposition of Edward A. Barrier.)

any consequence is studied right on the ground and every fire is reported, and all these matters, of course, are kept on record. Whatever lessons or conclusions may be learned are drawn from the occurrences.

Q. What have been your duties in connection with this work, Mr. Barrier?

A. As chemical engineer my duties were varied; in testing fire protection devices where chemical qualifications were necessary, and particularly in connection with fires, I have investigated cases where fires have occurred where chemistry was involved and in which a knowledge of chemistry was necessary. I have made a special study of spontaneous ignition, and in fact all fires where chemistry played any part. And as director of laboratories, of course that has been still one of my duties, to supervise that work as well as activities in other lines; [195] and as assistant chief engineer part of my duty is to pass on all fire reports that are issued by the organization, giving instruction as to what subjects shall be investigated further if thought desirable.

Q. Have you made any study of the properties or tendency of textiles toward spontaneous combustion? A. I have, to a considerable extent.

Q. Are the companies which are members of your association insurers of textile mills throughout the country?

A. Yes, I think that no doubt the Factory Mutual Companies insure more than a majority of the large

(Deposition of Edward A. Barrier.)

textile plants—the larger textile plants, including cotton, wool and silk.

Q. Are you familiar with Canton steam silk waste of the grades of No. 1 and No. 2?

A. In a general way, as related to its properties from a fire standpoint.

Q. Have you investigated and considered the properties of that commodity of those two grades, as to whether or not it is liable or possible to ignite spontaneously? A. I have.

Q. Is it possible for Canton steam silk waste of the grades of No. 1 and No. 2 which has been wet with either fresh or salt water to ignite spontaneously? A. In my opinion, it is not.

Q. What action takes place in the silk waste when it is wet with salt water?

A. Why, certain fermentation in a case where a silk is wet with salt water to a limited extent will take place on the gummy substance which the silk is coated with. That fermentation is a bacterial action and gives off some heat, a limited amount of heat. [196]

Q. Does it heat excessively?

A. I should say not.

Q. Roughly, what temperature would it attain when wet?

A. I doubt if the temperature would exceed 140 to 150 degrees Fahrenheit.

Q. Do you think it is possible that it would go as high as the boiling point of water, 212 degrees?

A. I do not.

(Deposition of Edward A. Barrier.)

Q. What happens to the bacteria—the bacterial action—when the top limit of heat is reached?

A. Why, the bacteria are killed by the temperature which to them is excessive and the action gradually decreases and the temperature falls at the same time. That is, the temperature gradually rises until it reaches a peak. At that point the bacteria are killed off and then the temperature gradually declines.

Q. Have you ever known of or experienced a fire in Canton steam silk waste due to spontaneous combustion?

A. I have only known of two fires in any kind of raw silk, and those have occurred recently. I am not sure whether those were of silk waste, or, if they were silk waste, whether they were of this particular grade. I think they were silk waste; of that I am not sure.

Q. (By Mr. KORTE.) Pardon me, are you speaking from personal knowledge or from a report on it?

A. I am speaking of personal knowledge.

Q. Personal examination?

A. And records that have come to my attention in connection with my duties.

Q. I mean, in the two fires that you speak of, did you make a personal examination? [197]

A. Those two fires were reported to us and my duty was to have them investigated, which was done. One of my assistants visited the plant and

(Deposition of Edward A. Barrier.)

later performed some experiments under my direction.

Q. (By Mr. LYETH.) What was the state of the material in these fires that you have in mind?

A. The material had been treated with an oil preparation and had been placed in a dryer and heated to a temperature of 275°, and the ignition took place inside the dryer.

Q. Where were these fires?

A. Cheney Brothers Silk Company in Manchester, Connecticut.

Q. When did they occur?

A. Why, recently; I don't know the exact date. I think sometime in October.

Q. I show you pamphlet headed "Boston Manufacturers Mutual Fire Insurance Company. Monthly report of fires and losses" and on page 2 thereof, under Nos. 11 and 13, and ask you if those are the reports of the fires that you have in mind?

A. Those are the reports, and I might say that these reports as they are here were before the matter had been investigated at the plant and in our laboratories. That is, these were the reports that we received.

Q. Have subsequent reports been made?

A. There has been a laboratory report made which was sent to the insurance companies—the Boston manufacturers, which is one of our associated companies—and also to the Cheney Brothers. I can tell

(Deposition of Edward A. Barrier.)

you the conclusions of the subject matter of the report.

Q. Will you just state them?

A. My conclusions of the report were that the cause of the fire was the oil with which the material had been treated, and as contributory cause, exposure to the high temperature in the [198] dryer.

Q. What kind of oil was it?

A. I don't know what kind of an oil it was. That was not determined.

Q. What effect would oil have that is impregnated with silk?

A. If it was an oil of an oxidizing nature, as this material evidently was, it would be subject to oxidation and that would produce a temperature high enough to char the material.

Q. Is there any oil of an oxidizing nature present in Canton steam silk waste?

A. There is not, normally.

Q. In your opinion, can fermentation alone result in spontaneous combustion in material?

A. No. Fermentation alone—

Q. Yes.

A. —cannot, in my opinion. By that I mean that the direct cause of the fire would not come from the fermentation process. Fermentation might be the indirect cause in certain materials.

Q. Is it a generally well known fact that many—in fact, most—substances of animal or vegetable origin when wet will ferment and give off a certain amount of heat?

(Deposition of Edward A. Barrier.)

A. I should say that it is generally known among those who know anything about the subject at all, and it is a subject of, I think, general knowledge with reference to certain materials.

Q. Such as?

A. Well, manure, for instance, tankage and hay. Those that know anything about the properties of hemp know that it heats—and jute.

Q. (By Mr. KORTE.) What is jute?

A. Jute is an Indian fibre that is used largely in the manufacture of rope and bagging, and to some extent is used for the cheaper grades of carpet. Jute yarns are made, woven in [199] carpets. It is a woody fibre that comes from the jute plant, that grows in India, and the fibres are very long. They are separated, more or less separated, by a process that it is subject to before it comes to this country; but even as it comes here, when it arrives there will be bundles of fibre that look something like soft bark and it has to be put through processes to separate the fibres—a heckling process, something similar to what is used in the linen industry. A very long course fibre is produced.

Q. (By Mr. LYETH.) Is that a process of maceration or fermentation?

A. You mean previous to being shipped here?

Q. Yes.

Q. And here?

A. Not here. That is purely a mechanical process.

Q. Is there any danger of spontaneous combus-

(Deposition of Edward A. Barrier.)

tion in these materials that you have mentioned?

A. Some authorities claim that there is danger of spontaneous ignition in hemp and jute. Personally, I doubt it. From my experience and study of the matter I doubt very much if it can occur. We have performed laboratory experiments with both materials to determine, if possible, whether they are subject to spontaneous ignition, and in the case of hemp we succeeded in obtaining a maximum temperature of above 160 degrees and in jute the maximum temperature was somewhat lower than that; I believe about 140 or 150. That is as high as the temperature went and from that point it gradually decreased.

Q. That is nowhere near the ignition point?

A. Oh, no.

Q. Will you state whether or not the presence of the salts in sea water in the case of Canton steam silk waste being wet [200] with sea water would have a tendency to check or accelerate the fermentation process and the consequent giving off of heat?

A. It would have a tendency to check the process because a fermentation is purely a bacterial action and the presence of the salt would interfere with the bacterial activities or the activities of the bacteria. It would act more or less as a mild poison to the bacteria; to what extent would depend, of course, on the amount of salt present.

Q. Assume, Mr. Barrier, that a cargo of 500 bales of No. 1 Canton steam silk waste and 367 bales of

(Deposition of Edward A. Barrier.)

No. 2 Canton steam silk waste had been stowed in the hold of a steamer which stranded in Puget Sound, resulting in the flooding of the hold in which the silk was stowed, and that this occurred on or about August 1, 1918; that thereafter the ship was floated and the silk waste unloaded on an open wharf at Tacoma, Washington, between August 7 and 10 and that the bales had been wet down with a hose; and assume further that the silk had been loaded in refrigerator-cars and transported across the continent to Providence, Rhode Island, by a silk train service, which would occupy a time in transit of about six days, so that the silk would arrive in Providence between August 21st and August 30th, a period of three to four weeks after it had been originally wet,—will you state whether or not, in your opinion, there was any possibility or danger of spontaneous combustion in the cargo during transit?

A. I believe there would be no danger of spontaneous ignition.

Q. Assume further that the refrigerator-cars were iced during transit, would that tend to increase or reduce the danger of spontaneous combustion?

A. It would tend to decrease it if such a thing could occur.

Q. Would the icing tend to check fermentation?
[201] A. It would.

Q. Assume the facts that I have stated in my hypothetical question up to the time that the bales of silk were unloaded on the wharf, and assume that

(Deposition of Edward A. Barrier.)

they were wet down with a hose and that approximately one-half of the cargo had been loaded in refrigerator-cars, and that the assistant freight claim agent of the defendant railroad, the Chicago, Milwaukee & St. Paul, had at that time directed that the silk be unloaded from the refrigerator-cars and that it be not shipped unless it was first frozen or dried,—whether or not such claim agent would have been reasonably justified in assuming that the wet silk waste was a dangerous commodity to be transported and liable to spontaneous combustion?

And to that question the defendant excepted, on the ground that it calls for the conclusion of the witness upon the ultimate facts and relates to an opinion in relation to the facts which do not involve technical knowledge or the knowledge of an expert, and, therefore, the witness is incompetent to testify as to such matters. But, notwithstanding said objection, the witness was permitted to answer the question as follows:

A. I do not consider that the freight agent would be justified in taking that action. I might say that my reason for that is this: That I believe that a man whose duties are to pass on such important questions as that should be familiar at least with the general properties of the materials with which he is dealing, and the properties of raw silk with reference to the possibility of spontaneous ignition, such as are generally known among those that are qualified to give information on the subject, can be easily obtained.

(Deposition of Edward A. Barrier.)

And to that answer the defendant excepted and his exception was allowed by the Court.

Q. Mr. Barrier, is it a matter of common knowledge among men who handle Canton steam silk waste as distinguished from chemical experts that it is not liable to spontaneous combustion? [202]

A. I should say it is.

Q. Can you burn the stuff?

A. I don't understand just what you mean by burning it. If you mean by that whether or not it will support its own combustion and burn with a flame, I should say no. Of course, the material can be exposed to heat from some other burning substance and will char, carbonize, but it is a very poor supporter of combustion and won't maintain its own combustion under ordinary conditions.

Q. Well, it won't burn through a mass if flame is applied to it? A. Oh, no.

Q. Is the fact that a commodity of animal or vegetable origin heats from fermentation, alone reasonable ground for assuming that it is a dangerous commodity to transport or that it is liable to spontaneous combustion?

And to that question the defendant objected, on the ground that it called for an opinion on the ultimate facts and not an opinion relating to anything which calls for technical knowledge. Notwithstanding said objection, the witness was permitted to answer as follows:

A. I should say not. The railroads are regularly transporting material which is subject to heating which does not ignite spontaneously.

(Deposition of Edward A. Barrier.)

And to the admission of that testimony the defendant excepted, and his exception was allowed by the Court.

Q. Such as?

A. Grain, hemp, jute and straw. In fact, almost any nitrogenous material, that is, any material that contains nitrogen or vegetable matter; manure, for instance.

Q. When the silk waste is wet are ammonia fumes given off? A. They are.

Q. Will you state whether or not, and to what extent, ammonia fumes are poisonous? [203]

A. Why, ammonia is what is known or classified as an irritant poison; that is, as differentiated from systemic poison. The irritant poisons are those which attack the tissues of the body, and such material is not ordinarily poisonous unless it acts to an extent to result in permanent impairment of the tissues, so that under ordinary conditions, where a person is exposed to ammonia fumes, providing they are at liberty to make their escape, the inconvenience caused by the fumes, their irritating effect upon the lungs is such as to drive the person out of the room before any permanently injurious results take place. As an example of that, performing some experiments on gas masks sometime ago, we had a concentration of ammonia up to two per cent in the room where we were experimenting, and that is the maximum amount that can be withstood without serious discomfiture to the skin; that is, above that concentration it acts as a caustic and destroys the skin tissues,

(Deposition of Edward A. Barrier.)

or attacks it. In those cases the men who were experimenting simply left the chamber in which we were experimenting and no permanent injury resulted.

Q. Were they overcome?

A. They were not overcome. Of course if they had been forced to stay there and couldn't have made their escape, they probably would have been overcome in time.

Q. Assume the facts with regard to this shipment of Canton steam silk waste up to the time that it was unloaded on the dock, and assume that it had remained there some four or five days and had been wet down with a hose,—will you state whether or not, in your opinion, the ammonia fumes that would or could have escaped or been generated by the fermentation of the silk waste would have rendered it in any way dangerous to men handling it and loading it into cars?

Mr. KORTE.—Objected to on the ground that it is [204] not based upon any facts, and the further reason that it calls for a conclusion to be derived from certain proven facts which do not permit an expression of an opinion by a witness, but are rather for the conclusion of the jury or the Court, and the witness is therefore incompetent to give his opinion.

A. I cannot conceive how the amount of ammonia produced out in the open could possibly be sufficient to interfere with the handling of the material. In the first place, the amount that is produced in a

(Deposition of Edward A. Barrier.)

given period of time is quite limited. Furthermore, being exposed to the air out of doors, it would be quickly dissipated, so that the concentration of the gas in the immediate vicinity of the bales must be comparatively low, so low that it would not prevent the handling of the material.

Mr. LYETH.—You may inquire.

Cross-examination by Mr. KORTE.

Q. Mr. Barrier, if the facts actually showed that the men were overcome by the fumes you would change your opinion, wouldn't you? Answer that yes or no. A. If the facts showed that, yes.

Q. You stated, Mr. Barrier, in your opinion, that the heat which would be generated from the fermentation of the bales saturated with sea water would be limited in its amount. About how many degrees of heat do you think that the temperature would rise in the bales under the conditions which were stated to you?

A. I don't believe the temperature will rise above 150 degrees.

Q. Now if the temperature rose above that it would indicate that there was some other organic matter or property present which was producing the heat, wouldn't it? A. Yes. [205]

Q. And what could you lay that to—what substance?

A. It might be some foreign material which is subject to spontaneous ignition, such as oxidizable oils, for instance.

(Deposition of Edward A. Barrier.)

Redirect Examination by Mr. LYETH.

Q. Assume, in addition to the facts that I outlined in my hypothetical question that beans and rice were stowed in the same hold in the ship and that when the silk waste was unloaded on the wharf certain quantities of the beans and rice were sticking to the straw matting of the bales—will you state whether or not that would in any way increase the danger of spontaneous combustion or the heat that would be generated?

A. I think they would have practically no effect.

Q. (By Mr. KORTE.) This waste silk is classified as a nitrogenous matter, is it not, Mr. Barrier?

A. Yes, silk is a nitrogenous material.

Q. Beg pardon?

A. I say silk is a nitrogenous material, both raw and finished.

Q. (By Mr. LYETH.) What division of nitrogenous matter does it fall under?

A. What division?

Q. Yes. A. I don't know just what you mean.

Q. Is it a protein or nitro-cellulose?

A. Well, it is not either. Nitro-cellulose, of course, is a chemical produce, it is not a natural product, and becomes nitrogenous simply because part of the nitric acid group has been introduced into the material; but I should say that it belonged to neither of those classes. It certainly is not a nitro-cellulose, because it is not cellulose and it has none of the nitro group in it, and it contains no proteins.

(Deposition of Edward A. Barrier.)

Q. Are you familiar with garbage tankage?

A. Yes. [206]

Q. Does garbage tankage contain oils?

A. It does to some extent.

Q. Does the presence of oils in garbage tankage produce any tendency to spontaneous combustion?

A. It does; under some certain conditions spontaneous ignition of that material does occur, and that is undoubtedly due to combination of fermentation and the presence of oxidizable oils.

Q. Does the combustion, if it exists in that commodity, result from fermentation alone?

A. I should say not.

Q. What happens?

A. The fermentation undoubtedly is the primary cause that starts the action and raises the temperature to a point where the oxidation of the oils takes place quite rapidly. That is, it is possible that with the amount of oil present and the nature of the oil, that in itself, if the temperature were not previously raised, the fermentation would not result in spontaneous ignition.

Q. Then it is the combination—

A. It is the combination.

Q. —of fermentation and oxidation of the oils?

A. That is, oxidizable oils are very much more subject to spontaneous ignition if the temperature is raised externally from some other cause.

Q. (By Mr. KORTE.) Those are vegetable oils in tankage, are they not?

A. Both vegetable and animal. You get animal oils in tankage too.

(Deposition of Edward A. Barrier.)

Q. But principally vegetable oils?

A. Well, it would depend largely upon the character of the tankage, naturally. If there is as much refuse in it as there is in some garbage there would be a large proportion of the animal oils. [207]

Q. (By Mr. LYETH.) What happens in the case of hay wet—or straw?

A. In the case of hay, which probably can ignite spontaneously, fermentation processes take place and develop a temperature which is high enough to convert the material into what is known as pyrophoric carbon—results in the formation of pyrophoric carbon, which is a form of carbon or charcoal produced at low temperature—at comfortably low temperature. We have similar action, or rather the formation of this same material, pyrophoric carbon, when a steam-pipe comes in contact with wood. There is no question but what experience has demonstrated that fires may result from contact of steam pipes with wood, and although the temperature of the pipe and the steam is much below that necessary to result in ignition.

Q. (By Mr. KORTE.) What temperature, Mr. Barrier?

A. Even with low temperature steam, 218 to 220 degrees, just three or four pounds pressure of steam is enough under favorable conditions to cause it. This pyrophoric carbon formed at low temperature has the property of absorbing oxygen of many times its own volume. Something like 150 to 200 times its own volume of oxygen can be absorbed and condensed in the pores of the material, and under those conditions spontaneous ignition occurs. So

(Deposition of Edward A. Barrier.)

that in the case of hay the fermentation is not the direct cause, but it does convert the material into a carbonaceous mass which absorbs oxygen and ignites spontaneously. The bacteria themselves could not exist at the temperature at which ignition takes place; they would die before that point is reached.

Q. Is it customary to put salt in hay in order to check any tendency to spontaneous combustion?

A. I wouldn't say it is customary; I don't think it is customary, but it is done. I have known of its being done for that purpose. It does have that result in retarding fermentation [208] and keeping of the hay.

Testimony of George E. Corey, for Plaintiff.

And to further prove the issue on the plaintiff's part, GEORGE E. COREY was called as a witness and gave the following testimony:

Q. (Mr. LYETH.) Mr. Corey, what is your business? A. I am a cargo surveyor.

Q. Are you what is commonly known as a marine surveyor?

A. Yes, but I handle cargoes only; not hulls.

Q. How long have you been cargo surveyor?

A. I have been at this work off and on since 1906, either working for the average adjusters, or surveying cargoes since 1906.

Q. By whom are you employed at the present time? A. At the present time?

Q. Yes.

A. I am employed by various people. Shall I enumerate them?

Q. Please.

A. I am surveyor for the Admiral Line; for the Osaka Shosen Kaisha.

(Testimony of George E. Corey.)

The COURT.—Here at this port?

A. Yes, at Tacoma; yes, sir.

Q. Proceed.

A. A. M. Gillespie, operating the Swain & Hoyt Fleet.

Q. Is the Osaka Shosen Kaisha the owner of the "Canada Maru"? A. Yes.

Q. Is that company associated with the Chicago, Milwaukee & St. Paul in the through transportation?

A. Yes, sir—the connection for the overland cargo.

Q. Were you subpoenaed to appear here, Mr. Corey? A. Yes, sir. [209]

Q. Did you see the cargo in the "Canada Maru" when she went ashore at Cape Flattery?

A. Not when she went ashore.

Q. After she went ashore?

A. I saw the cargo when it arrived at Tacoma.

Q. And what connection did you have with the cargo?

A. I was appointed as cargo surveyor by the ship owners.

Mr. KORTE.—You are speaking of the entire cargo?

The WITNESS.—Yes, sir, for the interest of all concerned.

Q. (Mr. LYETH.) And were you appointed general average surveyor by the ship owner?

A. Yes.

Q. Did you see the cargo of Canton steam silk waste that was damaged in the "Canada Maru"?

A. Are you speaking of any particular interest?

Q. I am speaking of the interest of the American

(Testimony of George E. Corey.)

Silk Spinning Company. A. Yes, sir.

Q. What did that cargo consist of?

A. One thousand bales covered by four bills of lading, stowed in No. 1 hold—lower hold.

Q. Were they of two grades?

A. I don't know.

Q. Will you relate when the vessel arrived here and what she did?

A. Arrived in Tacoma, you mean?

Q. Yes, arrived in Tacoma.

A. She arrived in Tacoma the 7th day of August, 1918, I think that was the year. She went immediately to the Todd Drydock in Tacoma, or at Tacoma—and we put her on the ways, or on the drydock rather, and she was off, after patching her up, she was off on the 10th day of August, if my recollection serves me right [210] we started to discharge the cargo at 8:30 A. M. on August 10th, and we continued to discharge it until about 11:30 of the 10th, and the vessel began to take water so fast that the hull surveyors were afraid that she might sink at the dock and they ordered her back on the drydock, and she stayed on the dock all day of the 11th and she arrived back at the Milwaukee dock, I think about 9:00 P. M. of the 11th,

Q. About 9:00 P. M.? A. Yes.

Q. And then?

A. And she laid there all night and began to discharge about 8:00 A. M. of the 12th; that is my recollection.

Q. Did you see this Canton steam silk waste consigned to the American Silk Spinning Company?

A. Yes.

Q. Where did you see it?

(Testimony of George E. Corey.)

A. In the No. 1 lower hold.

Q. Did you see it on the dock?

A. Oh, yes, yes.

Q. Did you examine it? A. Yes.

Q. When did you examine it, approximately?

A. You want the date?

Q. Well, approximately.

A. It was along—I can't tell you the date we began to discharge that, but I think that stuff began to come out on the 12th and I had—I examined it from the time they started to discharge until they put it in the cars, at various times.

Q. Will you describe its condition?

A. As it was on the dock?

Q. Of the silk waste. [211]

A. The silk waste was taken out of the ship and placed on a platform between two sheds. There was an oil-shed and a freight-shed. We stood the bales on end so that they would drain and those bales were covered over with rice and beans and tea and various stuff; commodities that had broken loose in the hold. After we stowed them on deck, or on the dock, rather, they were warm; after they had laid there a little while, as all cargo does—all cargo that is wet will get warm, of all descriptions—then I turned the hose on it.

Q. Did you afterwards see it loaded in refrigerator-cars? A. Sir?

Q. Did you afterwards see it loaded on the refrigerator-cars?

A. Yes; I saw them loading at times. I was not there all of the time.

Q. Well, there were refrigerator-cars brought on the dock?

(Testimony of George E. Corey.)

A. They were brought down to the dock in the neighborhood of the waste silk.

Q. And did you see the silk in the refrigerator cars? A. Yes, sir.

Q. What was its condition; did you examine it?

A. The condition when I saw it was in the same condition as it lay on the dock,—warm.

Q. Was it heating to any alarming degree?

A. No, sir.

Q. Was it heating any more than any other cargo that has been wet that you have had experience with?

Mr. KORTE.—I object to that method of comparison. Let him tell how it was heating, as far as it can be done. We do not know how these other cargoes were being heating or what kinds of cargoes they were.

Q. Will you state, Mr. Corey, what experience you have had with [212] wet cargoes? Give the Court some idea of what cargoes you had to do with.

A. It is rather hard to do that. I have been in this work so long and I have been in a great many cases of wreck. For instance, I was on the “Shinyo Maru” that arrived about a year afterwards, and she was in the same condition. We had a great many hundreds of bales of burlap discharged from her and they were in a very heated condition—more heated condition than the waste silk.

Q. Was that forwarded?

A. No, that was sold.

Q. Was there any danger, in your estimation, of spontaneous combustion?

A. No, sir, none whatever.

(Testimony of George E. Corey.)

Mr. KORTE.—I don't think that has anything to do with showing how hot this was—what burlap might do or how it might get hot.

The COURT.—We are concerned with waste silk in this case.

Q. (Mr. LYETH.) Did this waste silk of the American Silk Spinning Company heat as much as burlap?

A. I would say it did not; no, sir; burlap heats about as much as any commodity I ever dealt with.

Q. Does it heat as much as beans or rice that has been wet? A. Well, I would say so.

Q. From your experience in handling damaged cargoes, Mr. Corey, will you tell the Court whether or not, in your opinion, the damaged silk waste of the American Silk Spinning Company was in any way dangerous to transport across the continent in refrigerator-cars?

A. (Turning to the Court.) Your Honor; if it had been my silk I [213] would have sent it forward immediately. As a matter of fact, I ordered the stuff in the cars—recommended it to go forward.

Q. Did you hear anything about its refusal—about the railroad refusing to forward it?

A. Yes.

Q. Did you see or talk with Mr. Wilkinson?

A. I talked with the gentleman whom I have been told since his name was Wilkinson—I didn't know at the time what his name was.

Q. Will you state what happened?

A. I was standing in the vicinity of the silk and this gentleman was standing about the same distance from me that you are standing from me, and

(Testimony of George E. Corey.)

he walked up to me and he said: "That silk can't go." And I says: "Why?" "Well," he said, "it might burn up the cars—it might burn up the depot; it might burn up the railroad property." And I says, "Mister," I said, "the Germans might come over here and shoot us all up, but they are not going to do it, and neither will that silk burn up the cars, and I am very much surprised to have you hold that silk here."

Q. Did you feel the bales of silk?

A. Yes, sir.

Q. Did you feel them on the day that you had the conversation with Mr. Wilkinson?

A. Yes.

Q. Please describe their condition.

A. The silk was warm; about as warm as cotton goods would get—piece goods. Very often we have piece goods, bolts of cotton that get warm; and the silk was just about the warmth that cotton goods would show in a case of this kind.

Q. You mean by that, those manufactured cotton goods?

A. Yes, manufactured in bolts. [214]

Q. In the fabric?

A. Yes; but not such a degree of heat as burlap will hold.

Q. Had the bales been washed down at intervals when you had this conversation with Mr. Wilkinson?

A. Yes; we had the hose on it.

Q. Had the beans and stuff been washed off?

A. Yes, some of it—we could not get it all off.

Q. Were there any fumes coming off?

A. No, sir, not to my knowledge.

Q. Any ammonia fumes?

(Testimony of George E. Corey.)

A. No, sir. Waste silk will show ammonia fumes if it is confined, if it is wet.

Q. Did the men in loading the bales on the refrigerator-cars experience any difficulty with ammonia?

A. No, sir, not to my knowledge.

Q. Did you hear any difficulty of that kind about that? A. Not to my knowledge, no, sir.

Q. How many times were you around, Mr. Corey?

A. Until the cargo was discharged and for months afterwards.

Q. Were you there every day while the cargo was being discharged?

A. While being discharged?

Q. Yes.

A. Oh, yes, I was there night and day.

Q. Night and day? A. Yes.

Q. So that you had plenty of opportunity to see this cargo all of the time? A. Yes.

Q. Did it at any time show any signs of undue heating so as to cause alarm from spontaneous combustion? A. No, sir. [215]

Q. In your mind?

A. No, sir; not in my mind; none whatever.

Q. Do you know whether this silk was unloaded from refrigerator-cars after you had your conversation with Wilkinson?

A. The silk was unloaded, but at that time it had been turned over to the underwriters and I dropped that part of the work.

Q. You did not have anything to do with that?

A. I had lots of other work to do, and Mr. Taylor took charge of that. In the meantime, I had

(Testimony of George E. Corey.)

recommended the silk to go forward, as the cargo surveyor.

Q. Or as the general average surveyor?

A. Yes.

Q. Do you know whether or not or what was done with it after it was unloaded from the refrigerator-cars?

A. Yes, sir; the silk eventually was taken to the Pacific Oil Mills.

Q. Was it loaded again in cars?

A. It was loaded in cars; I think boxcars.

Q. Loaded in boxcars? A. Yes.

Q. Do you remember the date?

A. No, I do not. It was some time afterwards, though.

Cross-examination by Mr. KORTE.

Q. You, of course, when the ship first came in, went on board of her? A. Yes, sir.

Q. And you went down into the hatches?

A. No, sir, it was too wet.

Q. Why didn't you go down into the hatch where the silk was located? A. Too wet. [216]

Q. Well, how did the man get it out of the hatch?

A. How did they?

Q. How did the men get it out of the hatch?

A. Well, in the ordinary manner.

Q. How—what way?

A. In the ordinary manner with the slings.

Q. What do you call the ordinary manner?

A. With the slings.

Q. Well, how did they get the bales into the slings?

A. The hold was submerged. This silk was practically submerged. It might have been a foot

(Testimony of George E. Corey.)

out, and they worked down from bale to bale, and we had pumps on board the ship sucking out the water.

Q. Then there were men down in the hatches?

A. Yes.

Q. But you said you did not go down?

A. No, sir.

Q. Why didn't you go down?

A. I had no reason to go down.

Q. Why; were you not looking over the cargo?

A. Yes; I could see all I wanted to see from the top side.

Q. And it looked pretty bad to you?

A. It looked very bad.

Q. And as the men were bringing it out of the hold were you there constantly? A. No, sir.

Q. Or off and on?

A. I was there from time to time in different parts.

Q. So that you know what was going on pretty near, in the relation to bringing this stuff out of the hold? A. Yes.

Q. Of course it took some time to get it out; it was not brought out in one day? [217]

A. I don't remember. It might have been taken out in one day, but I think they were two days getting that hold discharged—there was other stuff in that compartment.

Q. And as the men were taking it out you would keep the water up as far as possible so that there would not be too many bales exposed at one time?

A. I don't know about that.

Q. Well, how much do you know about this—you said that you were around there? A. Yes.

(Testimony of George E. Corey.)

Q. Then you did not pay any attention to it at all, or to them getting those bales out of the hold?

A. They took the bales out of the holds by means of slings—that is the stevedore's business and not mine.

Q. I understand that, but I am trying to get at your knowledge; you said you were around the ship all the time and you knew what was going on?

A. Yes.

Q. Now, did you see them bring the bales out of the hold at any time?

A. I saw them taking the bales out of the hold by means of the slings and the nets.

Q. And there were men down in the hold?

A. Yes.

Q. And you were there, were you, when they brought those men out suffocated and overcome by the fumes? A. On this ship?

Q. In taking the bales out of the ship?

A. No, sir, I never knew anything about that. That is news to me.

Q. Were you there when the men were unloading the two cars that were loaded on this dock, of waste silk; were you there when they unloaded them? [218]

A. You mean the refrigerator-cars?

Q. Yes. A. No, sir, I was not.

Q. Were you there when they were loading them?

A. Yes, sir.

Q. But not when they were unloading them?

A. No, sir.

Q. Nor when they were loading them up in the boxcars?

(Testimony of George E. Corey.)

A. I may have been in the vicinity, but I didn't see them unloading the silk. Mr. Taylor was in charge of that at the time and I had no more to do with it.

Q. But, at any rate, when they did put it on the dock, they kept it wetted down constantly?

A. Yes.

Q. And when the silk was in those two refrigerator-cars, pending the determination of whether it should go on or not, they kept it wetted down in there, didn't they?

A. I did not; no, sir.

Q. I did not ask you whether you did—but you said you were around there. A. Yes, I was.

Q. Well, did you see that they were wetting it, or see them wetting it?

A. I don't remember whether they wetted those cars down or not.

Q. But they kept them wetted down out on the—

A. —on the dock.

Q. And they did that, of course, to keep the heat down?

A. I ordered the stevedores to keep that stuff wet.

Q. And that would have to be done if it went on East to Providence—constant wetting down, to keep it from heating?

A. I am not a silk man. [219]

Q. How did you say that it ought to be shipped then—you say that you are a cargo surveyor?

A. Yes.

(Testimony of George E. Corey.)

Q. And what do you mean by that?

A. I don't understand you.

Q. What do you mean by a cargo surveyor, that title which you said you had?

A. You want me to describe what I do?

Q. I want you to describe yourself—you said you are a cargo surveyor and I don't know what it means; do you?

A. You are a lawyer and you ought to know as a lawyer.

Q. Perhaps I should, but let us get the benefit of your knowledge, which seems to be considerable—what do you mean by cargo surveyor?

A. In the case of a ship going ashore—I am speaking of this case here—

Q. Yes.

A. —it is the practice to have a man to stand by and make recommendations in regard to the sound and damaged cargo; and that is what I was there for. In my opinion, if the stuff is in shape to go forward, and will bear the freight charges, and from my knowledge of the work I think it will stand the transportation, and there is no danger of damage, I order the stuff forwarded.

Q. Then it is your duty to determine how a given cargo will ride without damaging itself or damaging other property?

A. Not wholly; no, sir. I had to consult with the underwriters and the man who owns it.

Q. Then your opinion would not be worth much as to whether this cargo was fit to ship across the

(Testimony of George E. Corey.)

continent? A. I think it would.

Q. Well, then, how *would ship*, or did you expect to ship this cargo to Providence, Rhode Island? [220]

A. Well, this cargo—Mr. Taylor arranged to have this cargo—

Q. I don't want Mr. Taylor's arrangements; I am asking you for your personal knowledge on the subject, as to how you expected to ship that cargo to Providence, Rhode Island.

A. You want to put me in the place of the silk owner?

Q. I want to put you in the place of the cargo surveyor.

A. If I had owned that silk—

Mr. KORTE.—If your Honor please, I do not care to have the man arguing with me.

Q. I am asking you what you would do.

A. I would put that silk in the car and I would have kept it wet at stations, if it was possible; then I would have sent a man along with it, or perhaps two men.

Q. For what purpose?

A. For wetting it down, if the railroad company could give me the water.

Q. If you didn't get the water, what then?

A. Then I would have to let it go through as we usually do. There was no danger of burning up anything.

Q. You think it would not burn up at all if it went through without wetting?

(Testimony of George E. Corey.)

A. Not in my opinion.

Q. Of course, you are not experienced at all in spontaneous combustion, are you? A. No.

Q. Did you have any occasion to come in contact with it ever? A. I never saw any.

Q. What is spontaneous combustion?

A. I don't know, sir; I can't say; I am not technical.

Q. Then when you say this article was not subject to spontaneous combustion, you didn't know what you were talking about?

A. Not spontaneous combustion. [221]

Q. It is a subject that you don't know anything about—very well; anyway, let us get back to the cargo. There was in the hold of this ship beans and rice and I don't know what all, was there not?

A. Well, you have a cargo plan there.

Q. All right; I will show you the cargo plan and I will ask you to state whether or not that represents the "Canada Maru" as it came in, Mr. Corey, to Seattle, with the various cargoes located in the hold of the ship?

A. It is three years ago, you know.

Q. Here is the plan (showing plan to witness).

A. Yes, sir. This is the plan of the "Canada Maru," Voyage 32, eastbound.

Q. That will be Defendant's Exhibit No. 19; that shows the plan of the ship? A. Yes, sir.

And thereupon, the defendant offered in evidence a diagram or plan of the ship, which was received in evidence and marked "Defendant's Exhibit No.

(Testimony of George E. Corey.)

19," and said exhibit is transmitted to the Circuit Court of Appeals with all of the other original exhibits.

And thereupon, the defendant offered in evidence a copy of the ship's log. The same was received in evidence and marked "Defendant's Exhibit No. 20," and the same is transmitted to the Circuit Court of Appeals with all of the other original exhibits.

Q. Now, there was in that ship rice, wool, oil, raw silk waste, sugar, tobacco, tea, beans and various cargoes?

A. Was there tea in the No. 1 hold?

Q. Well, it was in the ship's hold.

A. In No. 2 was the tea. [222]

Q. And the water got into all of the hatches?

A. No, sir.

Q. In what ones?

A. The No. 1, No. 2 and No. 3. There was about six or eight feet of water in the No. 3 and I should judge sixteen feet in No. 2 and perhaps eighteen or twenty feet in No. 1—it came up to the 'tween-decks, to the bulkhead between.

Q. And the No. 1 and the No. 2 would be here (pointing)? A. Yes, sir.

Q. I will mark that.

A. It is marked there—and here is the bulkhead.

Q. And the silk waste involved here was contained in hatch No. 1?

A. Yes, sir; that is my recollection.

Q. 948 bales?

(Testimony of George E. Corey.)

A. Yes, sir; or there might have been some in other places, but the bulk of the shipment was in No. 1.

Q. And where was the hole stove in the ship?

A. It was right along in the forward end near hatch No. 1.

Q. Near the rice and the other commodities, and the tea?

A. She was holed in various places under No. 1 and No. 2—the rivets were gone.

Q. What I want to get at is, that the rice and the tea and the beans that came out of these hatches were also wholly saturated by the seawater.

A. Yes, in No. 1 and No. 2, up to the 'tween-decks.

Q. So much so that you dumped them into the Sound? A. We dumped some tea eventually.

Q. Well, didn't you dump beans?

A. No; I think they were sold.

Q. And the rice?

A. They were put on scows and sold. [223]

Q. Well, none of it was sent forward?

A. Not any of the watersoaked stuff, no, sir—it was unidentifiable—we didn't know whose it was.

Q. You made the statement that the men did not complain while loading?

A. Not to my knowledge.

Q. And when you spoke of the loading of the cars, did you have in mind the refrigerator-cars?

A. Yes, sir; two or three refrigerator-cars; I

(Testimony of George E. Corey.)

don't remember whether it was two or three cars.

Q. The record shows that it was two,—anyway, it was the refrigerator-cars. A. Yes.

Q. Of course, at that time you took the bales, the first ones that came out of the hold, and they had been sprinkled down and wetted down and cooled when they were loaded into the refrigerator-cars, as much as you could cool them?

A. They were cooled and washed. Silk of this nature won't flame.

Q. How do you know it won't flame?

A. I have tried it with a match.

Q. You mean that you can't light it and get a blaze? A. No, sir.

Q. But it will burn? A. It will char.

Q. That is what I mean by burning—you are not trying to become an expert on spontaneous combustion, are you—you do not know what causes it, or what causes ignition at all, or anything about it, and when you said that you recommended this to go forward, you, by merely looking at it, thought it ought to ride?

A. The same as any other cargo of a like nature.

Q. What other cargo which would be of a like nature, do you have in mind? [224]

A. I spoke of cotton goods, for one thing.

Q. You think that cotton is of a like nature—that the component parts of cotton are the same as the component parts of silk?

A. I am not a chemist, I don't know.

Q. It is just your ordinary common knowledge;

(Testimony of George E. Corey.)

you are estimating or assuming that cotton is the same as raw waste silk?

A. I mean cotton as an illustration only.

Q. And while you know that cotton will heat, you say it will not burn—you have never known it to burn?

A. I never knew of a case of spontaneous combustion occurring in a damaged cargo by being wet like this.

Q. Did you ever hear of a hay stack burning up?

A. Yes.

Q. Have you ever lived on a farm?

A. No, sir, not on a farm—I have been to sea a long time.

Q. This stuff is a good deal like the fibre of the hay? A. I don't know.

Q. You don't know anything about that—well, that is all.

Redirect Examination.

Mr. LYETH.—Just one question.

Q. Some of the cargo was jettisoned to lighten the ship? A. Yes.

Q. To get her off?

A. Yes; there was quite a lot of stuff jettisoned.

Q. And were the beans and the rice, which you stated were unidentifiable, in the No. 1 hold?

A. It was identifiable only in a general way by the bills of lading, but the marks were gone and the bags burst by the swelling of the contents.

Q. And they were floating around?

A. Oh yes; we took it out in buckets. As a

(Testimony of George E. Corey.)

matter of fact, when [225] we had the ship on the ways the first time she was so heavy we could not lift her with the weight of the water, and the beans and rice from those broken packages were running out on the decks, and many hundreds of pounds ran out through the broken places in the ship's bottom.

**Testimony of Frank G. Taylor, for Plaintiff
(Recalled).**

And thereupon, to further prove the issue on the plaintiff's part, FRANK G. TAYLOR was recalled and gave testimony as follows:

Q. (Mr. LYETH.) Mr. Taylor, on August 12th when you made the arrangement with Mr. Cheney regarding the forwarding of this silk, did Mr. Cheney say anything to you about the time it would take to forward the silk by silk train service?

A. I asked Mr. Cheney how long it would take for the silk to get to Providence by silk train service and he said six days.

Q. (Mr. KORTE.) Of course, you did not know and do not know yourself how long it would take?

A. I did not.

Q. As to whether that was the schedule time or not? A. I did not.

Q. You were merely inquiring for information of him as to the probable time it would take?

A. Yes.

Deposition of Russell Weeks Hook, for Plaintiff.

And to further prove the issue on the plaintiff's part, the deposition of RUSSELL WEEKS HOOK was introduced and read in evidence in connection with the following stipulations:

IT IS STIPULATED that the copy of the insurance policy referred [226] to in the pleadings and the copies of the receipts of moneys received thereunder, furnished by the plaintiff to the attorney for the defendant, may be used on the trial as evidence in lieu of the original policy and receipts, subject to objections other than that they are not the originals.

It is stipulated that No. 1 Canton steam silk waste and No. 2 Canton steam waste are recognized standard grades in the handling and marketing of waste silk, and that the samples of each of said grades of Canton steam waste furnished by the plaintiff to Mr. Hook and Arthur D. Little, Inc., and to the defendant are practically identical with the commodities the subject of this suit.

It is further stipulated that uncertified copies of any tariffs, rules and regulations, classifications and rules of the Interstate Commerce Commission governing freight or commodities for shipment such as are involved in this suit may be used upon the trial in evidence in lieu of certified copies, subject to objection other than that the same are not certified. (By Mr. LYETH.)

Q. What is your full name?

(Deposition of Russell Weeks Hook.)

A. Russell Weeks Hook.

Q. What is your occupation, Mr. Hook?

A. Chemist.

Q. Will you state briefly what your training and experience has been as a chemist?

A. I am a graduate of the Chemistry and Dyeing Department of the Lowell Textile School, Lowell, Mass.; graduated in the year 1905 and in the following fall I went back as instructor in the Chemistry and Dyeing Department of the same school. I remained there for approximately three years. At the end of that period I was connected with a dye-stuff concern, engaged in selling and manufacture [227] of dyestuffs and various chemicals used in the textile industry. In the year 1908 I became associated with Arthur D. Little, Incorporated, and have been with him up to the present time, covering a period, I believe, of about twelve years. My work with Arthur D. Little, Incorporated, has been very broad, covering all fields of analytical work, and I have devoted a great deal of time to research work, pertaining specially to the textile industry. At the present time I am in charge of the textile department for Arthur D. Little, Incorporated, and a great proportion of my work is outside work in the plants and of a practical nature.

Q. Are the plants you refer to textile plants?

A. Textile plants.

Q. In New England?

A. Well, chiefly in New England; yes.

(Deposition of Russell Weeks Hook.)

Q. Have you, Mr. Hook, at my request, conducted any experiments with Canton steam waste of the grades known as No. 1 and No. 2? A. I have.

Q. Especially with respect to the question whether or not it is liable to spontaneous combustion? A. I have.

Q. Where did you obtain the samples of No. 1 and No. 2 Canton waste with which you conducted the experiments?

A. From the American Silk Spinning Company of Providence, Rhode Island.

Q. The plaintiff in this case. Do you know what the chemical analysis of silk waste is?

A. I have made a chemical analysis of two grades of Canton steam silk waste designated as grade No. 1 and grade No. 2. The results of my analysis are as follows: No. 1 silk: Boil-off test: Loss to 1 per cent neutral soap [228] solution at 203 degrees Fahrenheit, 34.5 per cent.

For No. 2 silk,—

Q. Just let me interrupt there. Would you explain what that means, Mr. Hook?

A. This boil-off test is a test similar that they make in the mills for removing the silk gum, and the figures shown under this determination in my analysis represent the approximate amount of natural impurities of silk gum present in these two grades of waste silk.

Q. And No. 1 is what? A. 34.5 per cent.

Q. And No. 2?

A. 41.2 per cent. The next determination: Ether

(Deposition of Russell Weeks Hook.)

extract: Oil, waxy or fatty matter; that is 1 per cent for the No. 1 silk, sixty-five one-hundredths of one per cent for the No. 2 silk. Either extract shows the amount of oily, waxy or fatty matter present in those two grades of silk.

Raw silk or silk waste has an approximate composition of two-thirds actual silk fiber and one-third of silk gum. In addition to these, there is present in all raw silk small amounts of oily, waxy and fatty matter, as well as pigmentary matter or natural coloring matter. From the above analysis No. 2 silk contains a somewhat greater percentage of silk gum, namely, 6.7 per cent. No. 2 silk—

Q. That is, 6.7 per cent more gum than No. 1 contains?

A. More than No. 1. No. 2 silk was found considerably darker in shade than No. 1 silk.

Q. Will you describe, Mr. Hook, exactly what experiments you conducted, giving in some detail exactly what you did and describing your apparatus?

A. In starting out my experiment work with these two grades of [229] silk I first procured sufficient quantity of ocean water. This ocean water was procured at a point well down Boston Harbor to avoid any chances of pollution due to industrial waste or sewage. The first experiments were more of preliminary tests for the purpose of determining just how these No. 1 and No. 2 silk wastes acted when wet with sea water and allowed to stand for a considerable period of time under normal room

(Deposition of Russell Weeks Hook.)

temperatures, which, at the time these tests were conducted, ranged from 65° to 75° Fahrenheit. I found upon wetting the two grades of silk waste with ocean water that at the end of approximately 24 hours fermentation set in and considerable amount of ammonia gas was evolved by the fermenting silks. Tests were then conducted with the two silk wastes by first wetting them with ocean water and placing them in an insulated wooden chest with chemical thermometers. The chest referred to in these tests is nothing more than a small-sized ice chest properly insulated and lined with zinc, the chest having the approximate inside dimensions, eighteen inches wide, two feet deep, two and a half feet to three feet long, provided with a close-fitting and insulated cover.

Q. How did you place the thermometer?

A. The thermometer was embedded in the silk so that its bulb did not reach below the bottom of the silk. That is, at all times the bulb of the thermometer was embedded in approximately the center of the silk waste packed in the chest.

Q. About how much silk waste did you put in the chest?

A. Approximately seven to ten pounds of silk waste were used in these tests.

Q. On what did you place the silk waste?

A. In our first test, conducted in the so-called insulated chest, the silk was supported on wooden grids, leaving an air space under the silk of about four to five inches. The chest was [230] closed

(Deposition of Russell Weeks Hook.)

and the date the test was started was recorded, and also temperatures on various dates. And the result of the temperatures recorded in the test conducted with No. 1 Canton steam silk waste wet with ocean water is as follows:

This test was started October 8th, 1920. The room temperature at the time the test was started was 64.4° Fahrenheit. The temperature of the silk in the chest was 66.2° Fahrenheit. The room temperature is the temperature of the room in which the chest was located during the tests.

Q. In other words, you had two thermometers—is that right? A. Two thermometers.

Q. One inside the silk and one in the room?

A. In the room.

Q. Where the chest was located?

A. That is it. The result of the test was as follows:

Date.	Temperature of Room. Degrees Fahr.	Temperature of Silk in Chest. Degrees Fahr.	Increase of Temperature of Silk over Room Temperature. Degrees F.-hr.
10/ 8/20	64.4	66.2	1.8
10/ 9/20	66.2	86.0	19.8
10/11/20	64.4	71.6	7.2
10/13/20	60.8	68.0	7.2
10/14/20	63.5	67.1	3.6
10/15/20	66.2	69.8	3.6
10/16/20	66.2	70.7	4.5
10/18/20	63.5	68.0	4.5
10/21/20	71.6	75.2	3.6
10/22/20	66.2	73.4	7.2
10/25/20	63.5	67.1	3.6

(Deposition of Russell Weeks Hook.)

This test covered a period from October 8th to October 23d, and the greatest difference in temperature recorded between the temperature of the silk in the chest and the room temperature was on October 9, when the silk in the chest showed a temperature of 86° Fahrenheit and the room temperature this date was 66° Fahrenheit, showing increase in temperature of silk over room temperature of 20° Fahrenheit. [231]

The next test conducted was with No. 2 silk waste. This test was conducted the same as test previously described with No. 1 silk waste. The results of the test are as follows:

Date	Time	Temp. of Room Degr. Fahr.	Temp of Silk in Chest. Degr. Fahr.	Increase in Temp. of Silk over Room Temp. Degr. Fahr.
11/17/20	11.30 A. M.	73.4	71.6	1.8 below room
“	4.00 P. M.	71.6	73.4	1.8 above
11/18/20	8.30 A. M.	69.8	93.2	23.4
“	9.45 A. M.	68.9	93.2	24.3
“	10.25 A. M.	69.8	95.0	25.2
“	11.00 A. M.	69.8	100.4	30.6
“	11.45 A. M.	69.8	102.2	32.4
“	12.30 P. M.	70.7	100.4	29.7
“	12.55 P. M.	69.8	104.0	34.2
“	1.30 P. M.	69.8	105.8	36.0
“	2.00 P. M.	69.8	104.0	34.2
“	2.30 P. M.	71.6	104.0	32.4

(Deposition of Russell Weeks Hook.)

Date	Time	Temp. of Room Degs. Fahr.	Temp. of Silk in Chest, Degs. Fahr.	Increase in Temp. of Silk over Room Temp. Degs. Fahr.
"	3.20 P. M.	71.6	102.2	30.6
"	4.15 P. M.	71.6	104.0	32.4
"	5.00 P. M.	73.4	107.6	34.2
11/19/20	9.00 A. M.	69.8	95.0	25.2
11/20/20	9.00 A. M.	69.8	84.2	14.4
11/22/20	9.00 A. M.	62.6	71.6	9.0
11/23/20	9.00 A. M.	68.0	77.0	9.0
11/24/20	9.00 A. M.	66.2	77.0	10.8
11/26/20	9.00 A. M.	68.0	73.4	5.4
11/27/20	9.00 A. M.	69.8	80.6	10.8
11/29/20	9.00 A. M.	64.4	77.0	12.6

This test was started on November 17, 1920, 11.30 A. M., and was concluded on November 29, 9 A. M. The greatest difference in temperature of the silk over room temperature was recorded at 1:30 P. M. on the 18th of November, the room temperature at this time and date being 69.8 Fahrenheit. The temperature of the silk in the chest at this time and date was 105.8° Fahrenheit, showing the temperature of the silk exceeded the temperature of the room by 36° Fahrenheit.

Further tests were conducted with approximately seven to ten pound samples of silk wastes 1 and 2. These tests were also conducted in the above described insulated chests. They were carried out as follows: The silk was first wet with [232] ocean water, placed in the insulated chests, allowed

(Deposition of Russell Weeks Hook.)

to ferment until no further rise in temperature of the silk in the chest was noted. The silk was then heated by the means of introducing artificial heat into the insulated chest. This was carried out by introducing an electric bulb into the bottom of the chest underneath the silk, which was supported on grids. The electric bulb was attached to the ordinary electric current supplied in our building. The wires connecting the light in the chest came through a small opening in the bottom of the chest having a diameter of approximately one inch. At the top of the chest, approximately one inch below the cover, there was another hole leading out of the back of the chest, having a diameter of approximately one inch. These two holes were both open during these tests. The wires of the electric bulb were led through the lower hole. A 100-watt and 110-volt nitrogen-filled bulb was used in these tests. The result of the test was, the temperature both of the room and of the heated No. 1 silk waste in the chest were as follows:

Date	Temperature of Room. Degs. Fahr.	Temperature of Silk in Chest. Degs. Fahr.
11/1/20	59.0	59.0
11/2/20	69.8	159.8
11/3/20	61.7	231.8
11/5/20	66.2	240.8
11/6/20	62.6	242.6
11/8/20	55.4	237.2
11/9/20	64.4	244.4
11/10/20	66.2	249.8

(Deposition of Russell Weeks Hook.)

Date	Temperature of Room. Degs. Fahr.	Temperature of Silk in Chest. Degs. Fahr.
11/11/20	62.6	240.8
11/12/20	73.4	253.4
11/13/20	66.2	253.4

This test was started on November 1, 1920, and concluded on November 13, 1920. The silk in this test reached a maximum temperature of 253.4° Fahrenheit.

Q. Have you the actual silk that you used in the first test which you conducted with No. 1 silk waste without any artificial heat? [233]

A. I believe I have. (Examining samples.) This is No. 1.

Mr. LYETH.—I offer that in evidence.

Sample of No. 1 Canton silk waste used in first test offered and received in evidence and marked “Plaintiff’s Exhibit 10, Deposition of R. W. Hook. Frank H. Burt, Notary Public.” Said exhibit is transmitted to the Circuit Court of Appeals with all of the other original exhibits.

Q. Did you use the silk marked “Plaintiff’s Exhibit No. 10” in the first test which you have described? A. I did.

Q. And did you use the same silk in the last test which you have described, with the bulb?

A. I did.

Mr. KORTE.—That is, the same kind of silk; he didn’t use the same exhibit?

Mr. LYETH.—No, the same silk.

Mr. KORTE.—Do you mean the same exhibit?

(Deposition of Russell Weeks Hook.)

The WITNESS.—Yes.

Q. In other words, you used this Plaintiff's Exhibit No. 10 in your first test with sea water?

A. I did.

Q. Running from October 10—

A. October 8th to October 23d.

Q. And when you observed no further rise in temperature you then continued the experiment by inserting the artificial heat by means of the bulb with the same silk? A. The same silk.

Q. Did you follow the same method with respect to the No. 2 waste?

A. The same method was followed with No. 2 waste.

Q. Have you the sample of the No. 2 waste with which you conducted the experiment?

A. I have. (Producing sample.)

Mr. LYETH.—I offer that in evidence.

Sample of No. 2 waste used in the above described test offered and received in evidence and marked "Plaintiff's Exhibit 11. Deposition of R. W. Hook. Frank H. Burt, Notary Public." Said exhibit is transmitted to the Circuit Court of Appeals with all of the other original exhibits. [234]

Q. After you had observed no further rise in the temperature of the No. 2 Canton steam waste, you introduced the artificial heat by means of an electric bulb in a similar manner that you did with No. 1?

A. I did.

Q. And will you now give the results of the experiment with the artificial heat?

(Deposition of Russell Weeks Hook.)

A. The results of these tests are as follows:

Date	Temperature of Room. Degs. Fahr.	Temperature of Silk in Chest. Degs. Fahr.
11/29/20	64.4	77.
11/29/20	68.0	122.0
11/30/20	68.0	149.0
12/1/20	75.2	131.0
12/2/20	64.4	127.4
12/3/20	55.4	181.2
12/4/20	75.2	190.4
12/6/20	68.9	201.2

This test covered a period of time from the 29th day of November, 1920, to the 6th day of December. The silk in the chest reached a temperature of 201.2° Fahrenheit on the 6th day of December.

Q. On any of these four tests that you conducted did you observe any evidence or tendency in the silk waste to ignite from spontaneous combustion?

A. I did not.

Q. Describe exactly what happened to the silk.

A. I noted in conducting these tests that after the silk had been wet with ocean water, placed in the insulated chest and allowed to remain in the chest, at the end of a period of approximately twenty-four hours fermentation started in and a large amount of ammonia gas was evolved. There was a slight heating of the silk. As the tests continued, the temperature decreased. This decrease in temperature was only noted in the case where [235] the silks were not heated artificially. The strong odor of ammonia persisted throughout the

(Deposition of Russell Weeks Hook.)

duration of all the tests. During the latter part of the tests a very disagreeable odor of a putrefying character was quite noticeable.

Q. Was that after you had introduced the artificial heat?

A. That was before artificial heat was introduced. That was when the silks were allowed to ferment in the chest without the addition of any outside heat.

Q. Now, then, what happened after you had introduced the artificial heat?

A. After artificial heat had been introduced in these tests the odor of ammonia was still present but not to such a marked degree. The odor of putrefying matter disappeared to a considerable extent, and, in fact, at the end of the tests there was practically no odor of a putrefying nature.

Q. What did you observe with respect to the silk that was nearest to the electric bulb?

A. On examining samples of silk in the chest that had been heated by means of electric bulb, it was found, after the tests had been running for several days, that the silk nearest the bulb in the chest in many cases had been charred.

Q. What sort of grids did you have under the silk?

Mr. KORTE.—What?

Mr. LYETH.—Grids; slats.

A. When the tests were first started we attempted to use wooden grids for supporting the silk in the chest, and at the time these wooden grids were used an electric hot plate was used for heating in-

(Deposition of Russell Weeks Hook.)

stead of an electric bulb; but that was found to produce too great a heat for these experiments, and subsequent tests were conducted with electric bulb.

Q. What happened to the wooden grids? [236]

A. It was found on examining the wooden grids that they had become badly charred, so much so that two of the grids directly about the electric hot plate had charred through and broken.

Q. Had the silk taken fire at any time while this hot plate or the electric bulb was underneath?

A. The silk had not taken fire.

Q. (By Mr. KORTE.) Could you give the capacity of that hot plate?

A. At the present time I am unable to give you the amount of heat generated by that electric hot plate. Possibly I could get that figure for you.

Mr. KORTE.—Oh, just approximately.

Mr. LYETH.—Just approximately.

Mr. KORTE.—That is all we care for.

A. As an approximate estimation of the heat developed by the hot plate, I would state that it was between 500° to 700° Fahrenheit.

Q. (By Mr. LYETH.) Did the silk nearest the hot plate and the electric bulb disintegrate?

A. Disintegrate?

Q. The disintegrated or charred silk is shown on Exhibit 10 by the orange red color? A. Yes.

Q. And on Exhibit 11 the same way? A. Yes.

Q. This is what you referred to by the disintegration or charring? A. Yes.

Q. This disintegration or charring took place

(Deposition of Russell Weeks Hook.)

only in the immediate vicinity of the hot plate or electric bulb—is that right? A. It did.

Q. Did the hot plate or bulb have the effect of drying out the rest of the silk? A. It did. [237]

Q. The thermometer with which you took the temperature of the silk at all times was in the center of the mass? A. Not at all times.

Q. Where was it?

A. Taken at different parts of the silk.

Q. The temperature reached where the silk disintegrated or charred was, I presume, greatly in excess of the temperature which you have recorded there? A. That is true.

Q. The highest temperature recorded with the artificial heat, which were, for No. 1, 253.4° Fahrenheit, and for No. 2, 201.2° Fahrenheit, were obtained with the thermometer in what position?

A. Away from the center of the silk, or at places not directly above the electric bulb.

Q. What was the purpose of introducing the artificial heat in your experiments?

A. The purpose of introducing artificial heat in these experiments was to determine if there were present in the silk certain materials that with the application of heat to them would result in producing chemical reactions that are of an exothermic nature. An exothermic chemical reaction is a reaction that evolves heat or gives off heat.

Q. What is the difference, Mr. Hook, between fermentation and exothermic reaction?

A. The heat developed or produced by fermenta-

(Deposition of Russell Weeks Hook.)

tion is due to the action of bacteria, where in straight exothermic chemical reaction the heat produced is due to straight chemical reaction.

Q. In other words, the fermentation is produced by organic life in the silk—is that right?

A. It is.

Q. And the exothermic reaction is a chemical reaction, resulting in different make-up of the materials? [238]

A. Different materials present that might combine or unite in some way to produce a straight chemical reaction evolving heat. For example, a true exothermic reaction is in a case of slacking lime.

Q. Is the heating of coal and the resulting spontaneous combustion due to an exothermic reaction?

A. The heating of coal is due to an exothermic reaction.

Q. Did you observe any exothermic reaction in the silk waste? A. I did not.

Q. What produced the heat that was observed in your first experiments before you put in artificial heat?

A. The heat produced in my first experiments before applying artificial heat to the silk was due to the presence of bacteria in the silk.

Q. Is it possible for fermentation to produce heat sufficient to cause any danger whatever of spontaneous combustion?

A. Heat developed by the action of bacteria never reaches a dangerous degree.

(Deposition of Russell Weeks Hook.)

Q. Why not?

A. For example, heating of horse manure, which heats up to quite a high temperature, is due entirely to bacterial action.

Q. What happens to the bacteria?

A. The bacteria require to become active a certain amount of moisture. When this moisture is supplied they at once become active and start in generating heat. They will continue the generation of heat until a certain temperature is reached which kills the bacterial life, and they then become inactive and the temperature of the material that is being heated by the bacteria gradually decreases. Practically all forms of heat-producing bacteria do not survive a temperature greater than 212° F., or the temperature of boiling water. [239]

Q. In your opinion, did the bacteria acting in the silk waste in your experiments become inactive when the highest temperature was reached, which you found was attained within one or two days after the silk was wet?

A. I should say they did, by the results of my tests.

Q. Did the conditions which were present in the insulated ice chest with the artificial heat introduced, in your opinion, approximate the conditions that would have taken place in a loaded freight or refrigerator-car of silk waste which had been wet with sea water?

A. I should say they not only approximate the

(Deposition of Russell Weeks Hook.)
conditions of a loaded freight-car with silk, but were more drastic.

Q. What do you mean by that?

A. More severe.

Q. Would your answer be the same if we were to assume the loaded freight-car had come across the continent from Seattle, Washington, to Providence in the month of August, 1918?

A. My answer would be the same.

Q. What was the next experiment?

A. Further experiments were conducted with the silk waste for the purpose of determining if the gases evolved during the fermentation of the silk were of an inflammable nature. Tests were carried out to prove this, as follows: Approximately two to three pounds of both No. 1 and No. 2 silk waste were wet with ocean water and placed in large salt mouth bottles. To illustrate what a salt mouth bottle is, it is a large bottle with a large mouth, a receptacle in which solid chemicals are usually shipped to analytical chemists. After the wet silk had been placed in these bottles, the bottles were stoppered and carefully sealed with paraffine wax. Through the stoppers of the bottles two glass tubes were inserted. The ends of the tubes protruded through the cork to the air were provided [240] with suitable stopcocks or seals to prevent any air entering into the bottles. These sealed bottles were allowed to stand at ordinary room temperature, which would be approximately 60° to 75° F. at the time the tests were conducted, for a period of approxi-

(Deposition of Russell Weeks Hook.)

mately 48 hours. At the end of this time the gases accumulating in the sealed bottles due to the fermentation of the silk were withdrawn through the above mentioned glass tubes entering the bottles through the corks, and subjected to chemical analysis for the purpose of determining if the gases generated were of a combustible nature. Chemical analysis showed that these gases were not combustible nor would not support combustion.

Q. (By Mr. KORTE.) Were those poisonous gases or nonpoisonous, as you recall them?

A. I made no tests to determine whether they were poisonous or nonpoisonous. I can make this statement, that I have reason to believe that these gases consisted chiefly of ammonia, carbon dioxide and possibly some carbon monoxide. Understand me that I made no analysis to actually determine this. The ammonia, of course, was evident by the strong odor.

Q. (By Mr. LYETH.) Now did you determine whether or not they were inflammable gases?

A. This was determined by taking suitable quantities of the gases and passing electric spark through them.

Q. Did you thereafter examine the gas?

A. The gases were thereafter analyzed by standard process used by gas chemists for determining whether combustion had taken place or not.

Q. And no combustion had taken place?

A. No combustion had taken place.

(Deposition of Russell Weeks Hook.)

Q. Did you introduce oxygen for these gases?
[241]

A. Oxygen was mixed with these gases and electric spark passed through the mixture of the evolved gases and oxygen, and no combustion was then noted.

Q. What was the purpose of introducing oxygen?

A. The purpose of introducing oxygen was to determine if there was any possible way to cause these gases to ignite. Oxygen, being one of the best supporters of combustion we have, was used to make the test as severe or drastic as possible.

Q. What was the next experiment?

A. The next experiment was conducted by taking a fresh sample of No. 1 Canton silk waste, wetting the same with sea water, placing it in the insulated chest, supplying artificial heat by means of electric bulb and allowing the silk to stand in this chest, being heated by the electric bulb, from the 16th of December until the 24th of December. During this test the opening at the top of the chest was closed with a cork stop. The opening at the bottom of the chest through which the wires ran to the electric bulb in the bottom of the chest was so arranged that as little air as possible could reach the inside of the chest by this source. After the silk had been standing and heating for approximately 24 hours the stopper at the top of the chest directly above the fermenting silk was quickly removed and a lighted burner or a gas flame pushed into the chest.

Q. Was that an ordinary Bunsen burner?

(Deposition of Russell Weeks Hook.)

A. That was a Bunsen burner. After waiting for a period of approximately three to five minutes the top of the chest was opened. It was found that the Bunsen burner was extinguished and there was a plain odor of illuminating gas mixed with ammonia evident. The surface of the silk at the point where the flame first struck it when being pushed into the chest was slightly charred.

Q. Have you the silk used in that experiment?

A. I have. [242]

Mr. LYETH.—I offer it in evidence.

Silk used in above described experiment offered and received in evidence and marked "Plaintiff's Exhibit 12. Deposition of R. W. Hook. Frank H. Burt, Notary Public." Said exhibit is transmitted to the Circuit Court of Appeals with all of the other original exhibits.

Q. Is the reddish yellow spot in Plaintiff's Exhibit 12 the place where the flame of the Bunsen burner touched the silk?

A. It is the place where the Bunsen burner touched the silk.

Q. What was the next experiment?

A. Experiments were conducted with samples of No. 1 and No. 2 silk waste by wetting two to three-pound samples of the silk with sea water and placing the same in large salt mouth bottles. The bottles were stoppered and two small openings of approximately $\frac{1}{4}$ -inch diameter were left in the corks to provide a supply of air to the wet silk. In one case heat-producing bacteria were added to

(Deposition of Russell Weeks Hook.)

the silk, or, in other words, the silk was inoculated with horse manure. The bottles were placed in wooden boxes and insulated by means of surrounding them with sawdust. These tests were started around the 23d to 25th of September, 1920 and were continued to the 12th or 13th of November, temperature readings being taken daily of the room temperature as well as the temperature of the silk in the bottles. These temperatures are shown by the following tables:

No. 1 Canton Silk Waste Wet With Sea Water and
Placed in a Large Glass-stoppered Bottle.

Date.	Temperature of Room. Degrees Fahr.	Temperature of Silk in Chest. Degrees Fahr.	Increase of Temperature of Silk over Room Temperature. Degrees Fahr.
9/25/20	75.2	86.0	10.8
9/27/20	73.4	86.0	12.6
9/28/20	73.4	82.4	9.0
9/30/20	75.2	82.4	7.2
10/ 5/20	68.0	75.2	7.2
[243]			
10/ 6/20	62.6	69.8	7.2
10/ 7/20	60.8	68.0	7.2
10/ 8/20	63.5	68.0	4.5
10/ 9/20	66.2	69.8	3.6
10/11/20	64.4	69.8	5.4
10/13/20	60.8	66.2	5.4
10/14/20	63.5	66.2	2.7
10/15/20	66.2	69.8	3.6
10/16/20	66.2	69.8	3.6
10/18/20	63.5	66.2	2.7
10/21/20	71.6	75.2	3.6

(Deposition of Russell Weeks Hook.)

Date.	Temperature of Room. Degrees Fahr.	Temperature of Silk in Chest. Degrees Fahr.	Increase of Temperature of Silk over Room Temperature. Degrees Fahr.
10/22/20	66.2	72.5	6.3
10/25/20	63.5	66.2	2.7
10/26/20	64.4	68.9	4.5
10/27/20	66.2	68.0	1.8
10/28/20	69.8	72.5	2.7
10/29/20	68.0	71.6	3.6
10/30/20	60.8	66.2	5.4
11/ 1/20	59.0	60.8	1.8
11/ 2/20	69.8	68.9	0.9 below
11/ 3/20	61.7	71.6	9.9
11/ 5/20	66.2	73.4	7.2
11/ 6/20	62.6	69.8	7.2
11/ 8/20	55.4	59.0	3.6
11/ 9/20	64.4	68.0	3.6
11/10/20	66.2	73.4	7.2
11/11/20	62.6	68.0	5.4
11/12/20	73.4	78.6	5.2
11/13/20	66.2	73.4	7.2

No. 1 Canton Silk Waste Wet With Sea Water and Inoculated With Horse Manure.

Date.	Temperature of Room. Degrees Fahr.	Temperature of Silk in Chest. Degrees Fahr.	Increase of Temperature of Silk over Room Temperature. Degrees Fahr.
9/23/20	66.2	71.6	5.4
9/24/20	69.8	77.0	7.2
9/25/20	73.4	82.7	9.3
9/27/20	73.4	82.7	9.3
9/28/20	73.4	78.6	5.2
9/30/20	75.2	80.6	5.4
10/ 5/20	68.0	71.6	4.6
10/ 6/20	62.6	68.0	5.4

(Deposition of Russell Weeks Hook.)

Date.	Temperature of Room. Degrees Fahr.	Temperature of Silk in Chest. Degrees Fahr.	Increase of Temperature of Silk over Room Temperature. Degrees Fahr.
10/ 7/20	60.8	64.4	3.6
10/ 8/20	63.5	66.2	2.7
10/ 9/20	66.2	68.9	2.7
10/11/20	64.4	68.0	3.6
10/13/20	60.8	65.3	4.5
10/14/20	63.5	66.2	2.7
10/15/20	66.2	68.0	1.8
10/16/20	66.2	68.0	1.8
10/18/20	63.5	66.2	2.7
10/21/20	71.6	71.6	0.0
10/22/20	66.2	69.8	3.6
10/25/20	63.5	64.4	0.9
10/26/20	64.4	68.0	3.6
10/27/20	66.2	66.2	0.0
[244]			
10/28/20	69.8	71.6	2.8
10/29/20	68.0	69.8	1.8
10/30/20	60.8	66.2	5.4
11/ 1/20	59.0	59.0	0.0
11/ 2/20	69.8	66.2	3.6 below
11/ 3/20	61.7	66.2	4.5
11/ 5/20	66.2	69.8	2.6
11/ 6/20	62.6	66.2	3.6
11/ 8/20	55.4	57.2	1.8
11/ 9/20	64.4	65.3	0.9
11/10/20	66.2	69.8	3.6
11/11/20	62.6	66.2	3.6
11/12/20	73.4	75.2	1.8

(Deposition of Russell Weeks Hook.)

The greatest increase in temperature of the silk in the bottles over the room temperature is as follows:

In the case of No. 1 silk waste wet with sea water alone, the greatest increase in temperature was 12.6° F.

In the case of No. 1 Canton waste wet with sea water and inoculated with horse manure, the greatest increase in temperature was 9.3° F.

This (producing sample) is a sample of No. 1 Canton steam waste moistened with sea water and placed in the bottle on September 24, 1920.

Mr. LYETH.—I offer that in evidence.

Sample of No. 1 waste moistened with sea water and placed in bottle Sept. 24, 1920, offered and received in evidence and marked "Plaintiff's Exhibit 13. Deposition of R. W. Hook. Frank H. Burt, Notary Public." Said exhibit is transmitted to the Circuit Court of Appeals with all of the other original exhibits.

Q. I show you a smaller glass jar labelled as follows: "No. 1 Canton Silk Waste wet with sea water and allowed to stand from 9/24/20 to 1/2/21." Signed "R. W. Hook," and also marked "Plaintiff's Exhibit 2, Jan. 3, 1921," and ask you whether the silk waste contained in this small jar was taken from the large salt mouth bottle marked "Plaintiff's Exhibit 13" on Jan. 2, 1921? A. It was.

Mr. LYETH.—I offer that in evidence. [245]

Q. The silk waste in this smaller bottle was taken from the large bottle in my presence on

(Deposition of Russell Weeks Hook.)

January 2d and you gave it to me? A. I did.

Q. Was the bottle marked "Plaintiff's Exhibit 13" kept in a box insulated with sawdust, such as you have described, from Sept. 24, 1920, until Jan. 3, 1921? A. It was.

Q. And you took it out of the sawdust on January 3d? A. I did.

Q. What was the next experiment?

A. Similar experiments as described above were conducted with No. 2 Canton silk waste by wetting with sea water and placing the silk in salt mouth bottles in one case, and by wetting with sea water and inoculating with horse manure in the other case. The temperatures recorded on these tests are as follows:

No. 2 Canton Silk Waste Wet With Sea Water and
Placed in a Bottle.

Date.	Temperature of Room. Degrees Fahr.	Temperature of Silk in Chest. Degrees Fahr.	Increase of Temperature of Silk over Room Temperature. Degrees Fahr.
9/25/20	75.2	82.4	7.2
9/27/20	73.4	82.4	9.0
9/28/20	73.4	82.4	9.0
9/30/20	75.2	77.0	1.8
10/ 5/20	68.0	71.6	3.6
10/ 6/20	62.6	68.0	5.4
10/ 7/20	60.8	66.2	5.4
10/ 8/20	63.5	68.	4.5
10/ 9/20	66.2	69.8	3.6
10/11/20	64.4	69.8	5.4
10/13/20	60.8	66.2	5.4
10/14/20	63.5	66.2	2.7

(Deposition of Russell Weeks Hook.)

Date.	Temperature of Room. Degrees Fahr.	Temperature of Silk in Chest. Degrees Fahr.	Increase of Temperature of Silk over Room Temperature. Degrees Fahr.
10/15/20	66.2	69.8	3.6
10/16/20	66.2	69.8	3.6
10/18/20	63.5	66.2	2.7
10/21/20	71.6	75.2	3.6
10/22/20	66.2	72.5	6.3
10/25/20	63.5	66.2	2.7
10/26/20	64.4	68.9	4.5
10/27/20	66.2	68.0	1.8
10/28/20	69.8	72.5	2.7
10/29/20	68.0	71.6	3.6 [246]
10/30/20	60.8	66.2	5.4
11/ 1/20	59.0	60.8	1.8
11/ 2/20	69.8	71.6	1.8
11/ 3/20	61.7	73.4	6.7
11/ 5/20	66.2	75.2	9.0
11/ 6/20	62.6	69.8	7.2
11/ 8/20	55.4	59.0	3.6
11/ 9/20	64.4	71.6	7.2
11/10/20	66.2	78.6	2.4
11/11/20	62.6	71.6	9.0
11/12/20	73.4	82.4	9.0
11/13/20	66.2	78.6	2.4

No. 2 Canton Silk Waste Wet With Sea Water and Inoculated With Horse Manure.

Date.	Temperature of Room. Degrees Fahr.	Temperature of Silk in Chest. Degrees Fahr.	Increase of Temperature of Silk over Room Temperature. Degrees Fahr.
9/25/20	75.2	82.4	7.2
9/27/20	73.4	84.2	10.8
9/28/20	73.4	82.4	9.0
9/30/20	75.2	84.2	9.0

(Deposition of Russell Weeks Hook.)

Date.	Temperature of Room. Degrees Fahr.	Temperature of Silk in Chest. Degrees Fahr.	Increase of Temperature of Silk over Room Temperature. Degrees Fahr.
10/ 5/20	68.0	71.6	3.6
10/ 6/20	62.6	77.0	14.4
10/ 7/20	60.8	68.0	7.2
10/ 8/20	63.5	69.8	6.3
10/ 9/20	66.2	69.8	3.6
10/11/20	64.4	66.2	1.8
10/13/20	60.8	66.2	5.4
10/14/20	63.5	69.8	6.3
10/15/20	66.2	68.0	1.8
10/16/20	66.2	68.0	1.8
10/18/20	63.5	73.4	9.9
10/21/20	71.6	71.6	0.0
10/22/20	66.2	64.4	1.8
10/25/20	63.5	66.2	2.7
10/26/20	64.4	66.2	1.8
10/27/20	66.2	68.0	1.8
10/28/20	69.8	71.6	1.8
10/29/20	68.0	71.6	3.6
10/30/20	60.8	65.3	4.5
11/ 1/20	59.0	60.8	1.8
11/ 2/20	69.8	66.2	3.6
11/ 3/20	61.7	69.8	8.1
11/ 5/20	66.2	71.6	5.4
11/ 6/20	62.6	68.0	5.4
11/ 8/20	55.4	58.1	2.7
11/ 9/20	64.4	66.2	1.8
11/10/20	66.2	73.4	7.2
11/11/20	62.6	66.2	3.6
11/12/20	73.4	78.6	5.2
11/13/20	66.2	73.4	7.2

(Deposition of Russell Weeks Hook.)

The greatest difference in temperature of the silk over room temperature in the case where No. 2 Canton silk waste was [247] wet with sea water and placed in bottles was 9° F. In the case where No. 2 Canton silk waste was wet with sea water and inoculated with horse manure and placed in glass bottle, the greatest difference was 14.4° F.

Now, I conducted some tests with No. 1 waste and No. 2 waste, simply wetting with distilled water instead of ocean water and inoculating with horse manure.

Q. Just give the highest increase of temperature.

A. The highest increase in temperature in the case where No. 1 Canton silk waste was wet with distilled water, inoculated with horse manure and placed in large glass bottle, was 9.3° F. above room temperature. In the case of No. 2 Canton waste wet with distilled water, inoculated with horse manure and placed in glass bottle, the highest increase was 9.9° F.

Q. Did you find as a result of these experiments of inoculation with horse manure that any material increase in the temperature resulted from the presence of the horse manure?

A. No material increase.

Q. What was the next experiment?

A. Experiments were conducted with No. 1 and No. 2 waste by heating these wastes in an apparatus known as Mackay's Cloth Oil Tester. This is an apparatus used by chemists for determining the liability to spontaneous combustion of various tex-

(Deposition of Russell Weeks Hook.)

tile fibres and materials, especially those that contain oily, greasy or fatty matter. There are numerous tests that I have conducted with No. 1 and No. 2 wastes under various conditions. These conditions, in brief, have been saturating No. 1 and No. 2 silk wastes with oils, such as cottonseed oil and neat's-foot oil, and heating them up in the oil tester and recording temperatures obtained, and more especially to note the possibility of spontaneous combustion of these two silk wastes even when impregnated with excessive amounts of oil that are known to rapidly [248] heat or oxidize when subjected to artificial heat.

First Experiment: Seven grams of No. 1 silk waste were placed in the cage of a Mackay tester. The jacket of this tester was filled with water and the apparatus gradually heated by the means of a Bunsen burner. Readings of the temperature of the silk were taken every fifteen minutes and were as follows: At the end of the first fifteen minutes the temperature of the silk was 150.8° F. At the end of two hours heating the temperature of the silk was 201.2° F. The silk was removed from the tester and examined and was found to show no evidence of charring and appeared unchanged.

The same test was repeated on No. 1 silk with the exception that the jacket of the oil tester was filled with an oil having an extremely high boiling point. The object of using this oil in the jacket was to produce excessive high temperature in the

(Deposition of Russell Weeks Hook.)

air chamber of the apparatus in which the silk was exposed.

Q. What oil did you use?

A. I used an oil known as Hallowax oil. After heating the silk in this test for $1\frac{3}{4}$ hours the temperature of the silk was 348.8° F. The silk was removed from the tester and was found to have been slightly scorched and turned to a light shade of brown.

The next test, seven grams of No. 1 silk were saturated with fourteen grams of cottonseed oil, placed in the cage of the combustion tester and gradually heated.

Q. The same amount of silk waste?

A. The same amount of silk waste; seven grams of silk waste and fourteen grams of cottonseed oil. After heating for forty-eight minutes the silk showed a temperature of 392° F. At 392° F. the silk turned brown and smoke was coming through the vent tubes of the combustion tester. At the end of [249] fifty-two minutes the temperature of the silk was 410° F. and considerable smoke was escaping from the vent tubes. At the end of fifty-five minutes, a temperature of 464° F. was recorded.

The same test as above was repeated, only using seven grams of No. 1 silk and saturating this silk with fourteen grams of neat's-foot oil. The temperature of the silk at the end of one hour had reached 206.6° F.

The following tests were conducted with No. 2

(Deposition of Russell Weeks Hook.)

Canton silk waste in the Mackey Oil Tester:

Seven grams of silk were saturated with fourteen grams of cottonseed oil. In this test the jacket of the apparatus was filled with Hallowax oil. The test was started at 11.45 A. M. and concluded at 1:30 P. M. The temperature of the silk at the conclusion of the test was 383° F.

The same test with No. 2 silk was repeated, only saturating seven grams of silk with fourteen grams of neat's-foot oil. At the end of 1¾ hours heating the temperature of the silk was 384° F.

Mr. LYETH.—Just one minute. I think, Mr. Hook, we will put these samples in evidence; I think it will be interesting.

Mr. KORTE.—Those are the little bottles?

Mr. LYETH.—Those are the little bottles.

The WITNESS.—This one I have just described.

Mr. LYETH.—I offer that in evidence.

Sample contained in bottle labelled "Canton No. 2 Silk Waste Cottonseed Oil Hallowax Oil Bath 424.4° F." offered and received in evidence and marked "Plaintiff's Ex. 14. Dep. of R. W. Hook. Frank H. Burt, Notary Public." Said exhibit is transmitted to the Circuit Court of Appeals with all of the other original exhibits.

Mr. LYETH.—I offer in evidence bottle marked "No. 1 Canton Silk Waste saturated with cottonseed oil and heated to 464° F." Said bottle was received in evidence, marked "Plaintiff's Ex. 15. Dep. of R. W. Hook. Frank H. Burt, Notary Public," and said exhibit is transmitted to the Circuit

(Deposition of Russell Weeks Hook.)

Court of Appeals with all of the other original exhibits. [250]

Q. This bottle, marked "Plaintiff's Exhibit 15," contains silk that you used in the experiment with the cottonseed oil and No. 1 Canton waste?

A. It does.

Q. The bottle marked "Canton No. 2 Silk Waste, neat's-foot oil, Hallowax Oil bath, 424.4° F.," contains the silk waste used in the experiment you described with neat's-foot oil? A. It does.

Mr. LYETH.—I offer that in evidence.

The bottle above described is offered and received in evidence and marked "Plaintiff's Ex. 16, Dep. of R. W. Hook. Frank H. Burt, Notary Public." Said exhibit is transmitted to the Circuit Court of Appeals with all of the other original exhibits.

Q. You may proceed with the next experiment.

A. On examining the silk from the test where it was impregnated with fourteen grams of neat's-foot oil and heated, the silk was found to be scorched and charred, especially at the lower end of the cage in the heater. In conducting this test, smoke was given off soon after the test had been started. I think that covers practically all those tests. A number of them were duplication tests.

Q. In any of the tests which you conducted with the Mackey Tester and impregnated the silk waste with various oils, did you find any evidence of ignition or spontaneous combustion?

A. The silk that had been impregnated with the oils in none of the tests burst into flame. Some of

(Deposition of Russell Weeks Hook.)

the samples that had been saturated with cottonseed oil or neat's-foot oil and subjected to abnormally high temperatures did show evidence of discoloration and charring, but in no case did they burst into flame even when taken out of the tester and exposed to the air.

Q. Would the exposing of the silk at that high temperature, impregnated [251] with oil, tend to increase the chance of spontaneous combustion?

A. It would.

Q. Why?

A. There would be a chance for it to take on or absorb more oxygen at that high temperature, which would tend to result in a more rapid oxidation, and theoretically it would tend to ignite quicker.

Q. Did it ignite at any time?

A. In none of my tests has the silk ignited.

Q. From all the tests and experiments that you conducted, Mr. Hook, and from your general experience with textiles, will you give us your opinion as to the possibility of either No. 1 or No. 2 Canton steam silk waste under any circumstances igniting from spontaneous combustion?

A. It is my opinion that there is no possible chance of silk waste similar to grades No. 1 and 2 that I have experimented with igniting spontaneously.

Q. Do you know of any experiments that could be applied to this silk waste that would be more likely to produce spontaneous combustion than the experiments that you conducted?

(Deposition of Russell Weeks Hook.)

A. I can't conceive of experiments of a more drastic nature than I have made that could be conducted in endeavoring to cause silk waste to ignite spontaneously.

Q. What happens to the silk waste when you apply a flame to it?

A. On applying a flame to silk waste of these grades it is extremely difficult to make the silk burn. It tends to char; in some cases there will be a flame burst out and it will burn for a second or two, and it simply extinguishes itself and results in a charring at the particular spot where flame is applied. In no cases have I observed that there is any tendency of the flame to spread throughout the bulk of silk. [252]

Q. What is the effect of the ammonia gas,—that is, that you have testified you observed emanating from the fermenting silk waste which had been wet with sea water—with respect to supporting or extinguishing combustion, if combustion were present?

A. It would act as a most excellent extinguisher of combustion.

Q. Is it possible for combustion to continue where ammonia gas is generated?

A. That depends on the concentration of the ammonia gas in the atmosphere surrounding the material that is burning or in the process of combustion.

Q. Assume that the No. 1 and No. 2 Canton steam waste thoroughly wet with sea water in bales were loaded in refrigerator-cars, whether or not com-

(Deposition of Russell Weeks Hook.)

bustion could possibly be supported in the gas emanating from the fermented silk?

A. I cannot conceive of combustion existing or being supported in the presence of the amount of ammonia that would be evolved by the fermenting silk.

Q. Would that be specially true where the silk was confined and the ammonia not allowed to escape freely into the atmosphere? A. It would.

Q. Is there a considerable amount of ammonia generated by the fermenting of the silk, or is it a small amount?

A. It is a considerable amount of ammonia.

Q. (By Mr. KORTE.) What per cent?

A. I made no estimation of the percentage of ammonia evolved, but the ammonia is so strong that a bottle of the fermenting silk standing in a room even as large as this is clearly noticeable.

(The room referred to is 10x20x12 feet in height.)

Q. (By Mr. LYETH.) Assume, Mr. Hook, that a cargo of 500 bales of No. 1 Canton steam waste and 367 bales of No. 2 Canton steam waste had become thoroughly soaked, submerged in salt water, due to the stranding of the steamer in Puget Sound on or about [253] August 1st, 1918, and that the silk had thereafter been unloaded on a wharf at Tacoma, Washington, from August 7th to August 10th, and had been, while on the wharf, wet down with a hose at intervals; and assume further that the silk, on or about August 15th-16th had been loaded in refrigerator-cars in which ice had been

(Deposition of Russell Weeks Hook.)

placed, and that said refrigerator cars had been transported across the continent by what is known as "silk train" from Tacoma to Providence, R. I., the transportation taking approximately six days, and that the silk had been delivered at the factory of the plaintiff in Providence from three to four weeks after it had been originally wet,—will you state whether or not, in your opinion, there would have been any reasonable ground to suppose that there would have been danger of spontaneous combustion in the silk?

A. My answer is that there would be no reason to believe, under the conditions that you have described, that there would be spontaneous combustion of the silk.

Q. What, in your opinion, would be the highest temperature that the silk would reach at any time during the time that I have described and the conditions that I have described?

A. Not over 150° F.

Q. At what time would the silk reach its highest temperature, in your opinion?

A. The time that the highest temperature would be reached would be expected after 24 to 48 hours after the silk had been wet.

Q. Well, do you mean by that, after the silk had been taken out of the water and exposed to the air?

A. After it had been taken out of the water.

Q. Would the temperature thereafter tend to decrease or increase?

A. The temperature would tend to decrease.

(Deposition of Russell Weeks Hook.)

Q. Would the heat produced by the fermentation of this silk waste, [254] in your opinion, be greater or less than the heat produced by the fermentation of horse manure?

A. It would be less than the heat produced by horse manure.

Q. Would the heat produced by the fermentation of this silk waste be greater or less than the heat produced by other animal products which have been wet with salt water, such as wool, etc.?

A. That is, under same conditions?

Q. Under the same conditions?

A. I am unable to give a definite answer.

Q. In your experience in the textile mills and with textiles generally, is wool liable to spontaneous combustion, in your opinion?

A. It had been my experience that I had never heard or personally known of a case where raw wool—that is, wool in the grease as it comes from the sheep's back—or scoured wool has ignited spontaneously.

Q. Did you in your experiments observe a temperature produced by the fermentation of the silk waste alone of anything as high as 150°?

A. I did not.

Q. In your estimate of 150° what temperature of the outside air were you assuming?

A. In making that estimate of 150° I was assuming rather severe conditions; for example, cars placed upon sidings and exposed to the hot, intense summer sun for a considerable period of time.

(Deposition of Russell Weeks Hook.)

Q. Would the presence of ice in the refrigerator-cars tend to reduce that temperature?

A. I should say that would tend to retard the temperature.

Q. And would the wetting down of the silk at intervals tend to lower the temperature and retard the fermentation? A. Most certainly. [255]

Q. Your estimate of 150° maximum temperature was then based on the extreme conditions—

A. Very extreme conditions.

Q.—that would be experienced on a trip across the continent? A. Yes.

Q. Will you describe, Mr. Hook, what the process of fermentation is in silk waste, with particular reference to whether the gum ferments first or the silk fibre?

A. Practically all organic bodies or substances similar in character to silk waste contain varying amounts of bacteria. In order for these bacteria to become active it is essential that they first be supplied with a suitable amount of moisture. When this moisture is supplied they immediately become active, and their activities increase and as a result heat is generated, and they will live until a temperature is reached which kills the bacteria present, and the most common forms of bacteria that would be met with in substances similar to this silk do not survive a temperature above 212° F., or the temperature of boiling water.

Q. Do the bacteria attack the gum in the silk first, or the silk fibre?

(Deposition of Russell Weeks Hook.)

A. They first work on silk gum. You might consider that they feed on this silk gum and break down the silk gum, due to various reactions. And in fact there is a process practiced abroad for degumming silk that depends on bacterial action. The same process is used in the rotting—or, using the same term, degumming—of flax fibre. Both these processes depend on bacteria, the bacteria working on the silk gum gradually decomposing the same. Eventually, if fermentation was continued along for any length of time, it would tend to attack the actual fibre, with the result that there would be more or less tendering or weakening of the fibre. These processes of degumming [256] silk or rotting linen by bacterial action, for that reason have to be conducted under very careful chemical control in order that bacterial action does not continue for a long enough period to seriously attack or weaken the fibre.

Q. Assuming the conditions with respect to the cargo of silk waste described in my hypothetical question, would the bacteria of the fermenting process have materially weakened the fibre of this silk if it had been transported by silk train as described in that question—that is, within three to four weeks after it had been wet?

A. I shouldn't have expected to find any appreciable weakening to the actual fibre if it had been transported at once and been kept in a wet-down condition and wet down at several intervals during its trip across the continent.

(Deposition of Russell Weeks Hook.)

Q. Would the drying out of the silk by opening up the bales, exposing them to the atmosphere and the sun for a period of four to five months, have materially weakened the fibre?

A. It is my opinion that a wetting—constant wetting and drying-out of the silk—carried out for a period of four or five months, would result in the tendering or appreciable weakening of the fibre.

Q. Referring to the silk contained in the bottle and marked "Plaintiff's Exhibit 13," and in the small jar marked "Plaintiff's Exhibit 2, January 3, 1921," which you testified had been wet with sea water on September 24th and kept enclosed in a bottle insulated until January 3, 1921, have you examined the fibre of that silk, and if so, will you state whether or not, in your opinion, the fibre has been materially weakened?

A. I have examined sample of a silk taken from the bottle marked "Canton Waste No. 1," which has been moistened with ocean water and kept moist from the 24th of September up to the 2d day of [257] January, 1921, and it is my opinion that the fibre is not appreciably tendered or weakened.

Q. (By Mr. KORTE.) Is not, you say?

A. Yes.

Mr. LYETH.—That is the same silk that was shown to the witness Lownes at Providence.

Q. (By Mr. LYETH.) Have you examined the silk waste contained in Plaintiff's Exhibit 12, which had been wet with sea water and placed in the ice

(Deposition of Russell Weeks Hook.)

chest and dried by artificial means? A. I have.

Q. Will you state what the condition of the fibre of that silk is?

A. It is my opinion that the fibre is more or less tendered or weakened.

Q. Whether or not you can easily break the silk that has been dried by artificial means?

A. Silk that I have taken from that sample breaks in many cases quite easily, showing lack of strength.

Q. Can you state, Mr. Hook, from your experience in textile mills whether or not the strength or weakness of the fibre of silk waste materially affects the commercial value thereof?

A. It most certainly does affect the commercial value.

Q. In what way?

A. It produces, in the first place, in the process of manufacture a yarn that has little strength, which may offer more or less difficulties in the process of drawing and spinning; also it will offer difficulties in the process of warp preparation as well as in weaving and in the subsequent dyeing and finishing processes.

Q. What would be the result of the weakened fibre with respect to the cloth finally produced?

A. It would produce a cloth of inferior quality, and due to the fact [258] that the cloth would have poor strength it would have a tendency to burst or break quite easily. And I might add that a tendered fibre to start with in a process of manufacture under usual manufacturing conditions does

(Deposition of Russell Weeks Hook.)

not gain in strength, and subsequent processes of dyeing and finishing, if anything, tend to enhance this tendering and weakening, and as a final result you get an inferior fabric for reasons that I have stated above, chiefly due to the weakness of the original fibre.

Q. Would the wetting down of the silk under the conditions set forth in my hypothetical question tend to check the fermentation or the action of the bacteria?

A. It is my opinion it would tend to check the fermentation.

Q. Assume, Mr. Hook, that a cargo of Canton steam waste, 500 bales of No. 1 and 367 of No. 2, had been thoroughly wet in the hold of a steamer which had stranded in Puget Sound on August 1, 1918, and had thereafter been unloaded from the steamer on the wharf at Tacoma, Washington, from August 7th to August 10th, and had been wet down with a hose from time to time, and had been partially loaded into refrigerator-cars on August 15th to 16th, in which it was intended to put ice, and that it was intended to transport the silk in the refrigerator-cars, iced, by silk train service across the continent to Providence, R. I., in about six days,—would a person occupying the position of Claim Agent of the railroad, assumed to have experience in handling cargoes generally, have been reasonably justified in assuming that the cargo was dangerous and liable to spontaneous combustion?

(Objected to. The witness is incompetent to ex-

(Deposition of Russell Weeks Hook.)

press his opinion on the subject, and the question calls for an opinion in relation to facts which either the jury or the Court must pass upon as the ultimate question in the case; and it does not call for an opinion upon a technical question or involving technical knowledge which either [259] the Court or the jury are not familiar with.)

A. My answer would be that they would not be justified in refusing shipment of a cargo under conditions as stated.

Q. (By Mr. LYETH.) Mr. Hook, have you the wooden grids or cleats on which you placed the silk waste in the insulated ice chest and which were charred or burned? A. I have.

Q. Will you produce them? (Wooden grids produced by witness.)

Mr. LYETH.—I offer that in evidence.

(Grids, marked "Plaintiff's Exhibit 17. Deposition of R. W. Hook. Frank H. Burt, Notary Public," offered and received in evidence. Said exhibit is transmitted to the Circuit Court of Appeals with all the other original exhibits.)

Cross-examination by Mr. KORTE.

Q. Mr. Hook, in speaking of Exhibit No. 12, which is the sample of waste silk which you testified you wetted with sea water and heated directly to dry it, you said that the fibre was injured or weakened. Can you tell me the per cent of weakening of the fibre?

A. No, sir. I have no way of telling you the

(Deposition of Russell Weeks Hook.)

actual per cent of weakening. That could only be really ascertained by having that stock degummed and spun into yarn and then making a breaking strength of the yarn. Any individual breaking strength of the fibres as they now exist, I doubt very much would be of any value.

Q. You spoke of this shipment moving and the condition in which it was offered to the Railway Company, having been saturated with sea water during the period that the ship was grounded, which was between seven and ten days, and then unloaded on the dock, and then thereafter loaded on the cars and moved here to Providence, R. I.; that it would have to be wetted down at times, at intervals en-route; is that what you meant? [260]

A. It would be best to wet it down at intervals during this trip across.

Q. And if it did not it would be apt to damage?

A. Apt to damage.

Q. And do you think it was necessary to have the car iced—put in a car that had been iced, a refrigerator-car?

A. That is simply an extra precaution. It certainly would, in my opinion, be effective.

Q. You would not advise the shipment to go forward without at least being kept wet at intervals?

A. I would keep it wet, yes.

Q. You would not advise having it sent forward without that treatment or precaution?

A. I should keep it thoroughly wet during transit.

Q. Now in speaking of spontaneous combustion,

(Deposition of Russell Weeks Hook.)

Mr. Hook, and of ignition, you mean by ignition, a flame? A. I do.

Q. Yes, that is right. That silk waste, under the conditions which you have tested it, will not spontaneously flame?

A. I have not been able to produce a flame.

Q. Will it do anything short of the flaming by way of heating or burning?

A. Will you state that question again?

Q. I say, will silk waste such as you have experimented with cause anything short of a flame by way of burning, by reason of its spontaneously heating under the conditions which you have tested it on, which you have in mind that this particular cargo was in at the time?

A. Your question is not clear.

Q. Will it heat to the extent of burning or charring—that is, take the life out of the material itself, heat to that extent? [261]

A. I have been unable to obtain any degree of temperature high enough for the silk to char by a natural fermentation.

Q. What degree of heat would be necessary to produce either a flame or a charring condition? Well, take the charring condition first.

A. The ignition point of silk, to my knowledge, has never accurately been determined. I should take it, a point at about which you might assume silk would char and disintegrate would be a temperature or around 348° F.

Q. 348?

(Deposition of Russell Weeks Hook.)

A. That is the temperature at which silk starts to decompose.

Q. At what temperature would you say that it had become so hot that you could not handle it by hand?

A. Basing my statement on comparison with water, the average person can stand a temperature around 125° to 130° hot water, and a person like anybody that is familiar with handling hot water, like chemists, will probably stand up to 140° to 150°, but he immediately wants to take his hand away.

Q. Exactly. Now, the make-up of the silk fibre is of two compounds, is it not? A. It is.

Q. State what those two compounds are.

A. It consists of two compounds primarily; the actual silk fibre, known as fibron—f-i-b-r-o-n; the other constituent is silk gum, known as sericine; s-e-r-i-c-i-n-e, I believe. In addition to the actual fibre, the fibron, and the silk gum or the sericine, there are small amounts of oily, fatty and waxy matters, as well as natural coloring matter, or pigmentary matter, as it is sometimes called.

Q. Both of these compounds are soluble, are they not? They will dissolve, will they not? [262]

A. That depends on what solvent you use.

Q. Well, take the solubility of any organic matter; this will come within that class, will it not?

A. You have to specify some special solvent when you—

Q. Well, wouldn't it dissolve say in sea water applied to it?

(Deposition of Russell Weeks Hook.)

A. Sericine is soluble in water. That is the silk gum. The fibre itself, the fibron, would be considered as insoluble in water.

Q. Any kind of water? That is, I am speaking of sea water, Mr. Hook. But it is subject, of course to attack by the bacteria which may be in the sea water, would it not, if there was bacteria in it?

A. The sericine—

Q. Yes. A. —or the fibron?

Q. And the fibron. Pardon me right there. For instance, the sericine or the gummy substance, as we call it, would be first attacked, would it not, by the bacteria?

A. I believe the sericine would be the first.

Q. Then when that was through the bacteria would necessarily attack the fibre, would they not?

A. You would naturally expect they would attack the fibre.

Q. And if the silk waste had been left in the sea water longer than it should have been in order to prevent that condition, you would have a weakening of the fibre by reason of over-maceration? What I mean by over-maceration is the overtime allowed for the degumming.

A. Under those conditions I should imagine that a great deal or a large amount of the sericine would be dissolved out or dissolved away from the actual silk fibre, and, in any case, the sericine would be softened up to a considerable extent by the salt water. [263]

Q. And then would not the fibre be attacked if

(Deposition of Russell Weeks Hook.)

it still remained in the salt water after that period of time?

A. I couldn't definitely state as to whether the fibre would be attacked to any extent or not under those conditions and the period of time in which it was submerged in salt water.

Q. How long a time, if you know, should raw silk be left in moistened or wet condition in order to remove the gummy substance?

A. I couldn't state definitely. That depends a good deal on temperature conditions.

Q. I think probably you are not acquainted with that branch of the industry?

A. Not if that refers to the process I was speaking of this morning—that of maceration.

Q. In your opinion, do you say that the saturated condition of the silk during a period of, say, ten days from the time it would be on the docks until it got here to Providence, would not affect the fibre?

A. As long as it was kept wet, well saturated, I doubt if there would be any appreciable tendering or weakening effect of the actual silk fibre.

Q. This particular kind of organic matter is what we term as nitrogenous matter?

A. It is a nitrogenous compound.

Q. In your opinion, nitrogenous matter will not spontaneously flame under any conditions? I am speaking now of nitrogenous matter that has not been inoculated with anything else?

A. To the best of my knowledge and experience, I have never known of substances that are of a

(Deposition of Russell Weeks Hook.)

nitrogenous nature similar to silk igniting spontaneously.

Q. What do you call nitrogenous matter that is similar to silk? Can you mention some?

A. For example, wool. [264]

Q. Hair? A. Hair.

Q. You say that that will not spontaneously burn or char?

A. To my knowledge, I have never heard of cases where it did.

Q. Would you classify, for instance, packing-house tankage as similar to this nitrogenous matter, this waste silk?

A. That is nitrogenous; it contains nitrogen.

Q. Have you ever heard of that spontaneously charring or burning? A. Personally I never did.

Q. And garbage tankage, which we find?

A. I never have.

Q. And, for instance, textile waste, such as the clippings from the tailors' shops and those things; have you heard of them spontaneously burning or charring?

A. Personally, I have never heard of those materials—

Q. What is your belief along that line from your technical knowledge you have on the subject?

A. A different feature is introduced into the case when you speak of tailors' clippings and things like that.

Q. Is wool—cotton is not nitrogenous, is it?

(Deposition of Russell Weeks Hook.)

A. It is not.

Q. Is hay a nitrogenous compound?

A. Hay, to the best of my knowledge, contains nitrogenous matter.

Q. Have you ever heard of hay spontaneously burning?

A. Personally, I have never known of hay spontaneously burning.

Q. Or jute?

A. I have never known of jute spontaneously igniting.

Q. Well, to be fair with you, I want to say, when you say "spontaneously burn," that it will heat to the extent of charring and hay, for instance, to flaming? You have never heard of it?

A. No. [265]

Redirect Examination by Mr. LYETH.

Q. In answer to Mr. Korte's questions, you spoke about a different feature entering into the question of textile waste and tailors' cuttings and the like. What is that feature?

A. With tailors' cuttings and textile wastes in a great many cases, these materials from the time they are manufactured have a chance to come in contact or pick up more or less varying amounts of oily or greasy matter; and it is a well-known fact that textile materials, especially cotton, that contain oily or greasy matter, when stored will heat up, and if there are sufficient amounts of oily or greasy matter present, there may be enough heat

(Deposition of Russell Weeks Hook.)
develop to cause spontaneous combustion.

Q. What is the chemical action that takes place in such cases?

A. The chemical action that takes place in a case of spontaneous combustion due to such foreign materials with oily or greasy matter being present, is due to a rapid oxidization of the oil, or the oil, in other words, absorbing oxygen, and that rate of absorption and oxidization rapidly increases with the development of heat, which may be of such a degree that it will cause ignition. That can best be illustrated, perhaps, by citing a linseed oil which we are all familiar with. Linseed oil is a nondrying oil and it is an oil that rapidly absorbs oxygen from the air, and textile materials containing appreciable amounts of this oil or oil of similar character will heat up due to that oxidation. And that rapid oxidation is further shown in the mixing of paints where linseed oil is part of the vehicle, which, when spread out over a large surface, gives the oil a chance to rapidly oxidize and forms a thin film.

Recross-examination by Mr. KORTE.

Q. That suggests a question, Mr. Hook. Would it make any difference in relation to this particular cargo if it had been saturated [266] somewhat with oil, say cocoanut oil, and come in contact with it? Would that have increased this condition, so far as spontaneous burning and flaming is concerned?

A. If there had been appreciable amounts of oil

(Deposition of Russell Weeks Hook.)

in that silk they would have a tendency to cause the silk to ignite spontaneously quicker than if it was free from all traces of oil.

Q. And would it make any difference if this cargo of raw silk was inoculated with sewage water rather than ordinary sea water as you tested it with?

A. If here were appreciable amounts of sewage water present, that would tend to increase the bacterial content of the silk and possibly would promote more active fermentation.

Q. And that would increase the heat?

A. That would develop heat. I can't say whether it would increase the heat any more than the natural bacteria present or not.

Q. It would not, then, increase the rise in temperature or the heat in the bales under those conditions?

A. I should not expect it would.

Redirect Examination by Mr. LYETH.

Q. Well, in your experiments, Mr. Hook, you inoculated the silk waste with a great deal more oil than the amount of the silk waste, and further you heated it to an extremely high temperature, and you were unable to cause spontaneous combustion?

A. I was unable to cause the silk to ignite spontaneously or burst into a flame.

Q. Therefore, in your opinion, with these grades of silk waste would the presence of so-called flammable or oxidizing oils have produced any dangerous spontaneous combustion without artificial heat?

(Deposition of Russell Weeks Hook.)

A. Will you state that question again? (Question read.) [267]

A. I wouldn't say that they would produce, but there would be great danger with excessive amounts of these oils present that the silk might be subjected to certain conditions that might ultimately result in combustion if large amounts of oils were present.

Q. Assume the conditions present in my hypothetical question with respect to the cargo of silk wastes in this suit, then when the bales were taken out of the hold of the vessel there were sticking to the straw coverings of the bales, beans or rice—would that, in your opinion, have caused any danger of spontaneous combustion?

A. None whatsoever.

Q. Mr. Korte asked you about the necessity of having the silk wet down frequently during transit, and, as I recollect, you answered that it would be desirable to wet it down. Did you have reference to the danger of spontaneous combustion or to preservation of the silk fibre?

A. The preservation of the silk fibre.

Q. Do you think it would have been necessary, to eliminate danger of spontaneous combustion, to wet it down during the transit?

A. It would have been very wise precaution, in my mind.

Q. (By Mr. KORTE.) Water is a very good con-

(Deposition of Russell Weeks Hook.)

ductor of heat—it will dissipate whatever heat there was? Isn't that true? A. Yes.

Q. (By Mr. LYETH.) Will you give us the chemical content of the fibron?

A. I can give you the elements that it is composed of; I can't give you the actual percentage of composition offhand. Fibron consists of carbon, hydrogen, oxygen and nitrogen.

Q. What elements are in wool fibre?

A. Wool fibre is very similar in composition to the silk, with the exception that wool fibre contains in its composition sulphur and silk does not. In other words, wool consists of carbon, hydrogen, [268] oxygen, nitrogen and sulphur.

Q. Whether or not the presence of sulphur in wool would increase the danger or tendency to spontaneous combustion over that of silk?

A. I couldn't say that it would, but from a theoretical standpoint I should say possibly that the presence of sulphur might make the wool more liable to spontaneous combustion than silk.

Q. (By Mr. KORTE.) What are the chemical contents in the sea water?

A. Sea water consists chiefly of sodium chloride salt, magnesium chloride, calcium chloride, and I believe there are small amounts of potash salts and some phosphates. That is a rough approximation.

Q. And the relative quantities—can you give them—in reference to the first that you mentioned?

A. I couldn't offhand; I don't recall just the pro-

(Deposition of Russell Weeks Hook.)

portions. The principal ingredients are, of course, common salt, and in less quantities calcium chloride and magnesium chloride.

Q. (By Mr. LYETH.) Whether or not, Mr. Hook, the presence of these salts in the sea water which wet the silk waste would tend to increase the danger of spontaneous combustion or decrease it?

A. I believe they would have a tendency to decrease it.

Q. Is it not the general theory that salt is a deterrent to combustion? A. It is.

Q. In your testimony you said that you would advise the wetting down of the cargo of silk waste referred to in my hypothetical question. Did you have in mind the checking of the danger of spontaneous combustion?

A. I did not.

Q. What did you have in mind?

A. I had in mind keeping the silk in a thoroughly wet condition to prevent subsequent injury to the fibre. [269]

Q. Assuming the facts as stated in my hypothetical question yesterday with respect to the cargo of 867 bales of Canton steam waste, will you state what, in your opinion, would have been the best way to have handled the silk to prevent injury to the fibre?

A. By keeping it well wet down.

Q. Would the drying of the silk by exposing it to the atmosphere at Seattle in August, September,

(Deposition of Russell Weeks Hook.)

October and November, in your opinion have tended to weaken the fibre materially?

A. Silk after it has been once wet should be kept in a wet condition in order to prevent tendering or weakening in the fibre.

Q. That is, until it is boiled or degummed?

A. Until it is completely degummed.

Q. What is the effect of drying or attempting to dry it out in the natural atmosphere with respect to the weakening of the fibre?

A. Attempting to dry it out would tend to possibly enhance fermentation and thereby tendering the actual silk fibre.

Cross-examination by Mr. KORTE.

Q. You would keep it then in the condition, would you not, Mr. Hook, as the waste silk is now in, contained in the bottle, Plaintiff's Exhibit 13? You would keep it in that moist condition, would you? Would that be sufficient? Until it was ready to be degummed?

A. I would keep it in a wet condition until it was ready to be degummed.

Q. Would that be sufficient wetness as shown in Plaintiff's Exhibit 13?

A. More water would not do any harm.

Q. And when you speak of keeping it in a wet condition, it would require, of course, wetting it and keeping it wet while it [270] was traveling from Tacoma to Providence, Rhode Island, to the mill?

A. It would be advisable to keep it well wet down.

Deposition of Harry Albert Mereness, for Plaintiff.

And to further prove the issue on plaintiff's part, the deposition of HARRY ALBERT MERENESS was introduced and read in evidence, as follows:

(By Mr. LYETH.)

Q. What is your full name?

A. Harry Albert Mereness.

Q. What is your occupation, Mr. Mereness?

A. I am operating chemist for the National Spun Silk Company of New Bedford.

Q. How long have you occupied that position?

A. Since May, 1919.

Q. What are your duties as operating chemist for the National Spun Silk Company?

A. Well, in the first place, I have the chemical control of the mill products; that is, the processing all the way through the mill; and, in the second place, as operating chemist, the operating end of it. I am responsible for the processing of the raw waste through the degumming stage, that is, until the gum is removed from the silk. I also look after the work for the Klotz Throwing Company, 25 Madison Avenue, New York.

Q. Are you chemist for the Klotz Throwing Company?

A. Yes, I am chemist for the Klotz Throwing Company.

Q. You look after their mills, the chemical work?

(Deposition of Harry Albert Mereness.)

A. I look after their raw products, the control of their raw products. [271]

Q. How many mills have they?

A. Twelve or fourteen; twelve, I think; twelve mills.

Q. Will you state briefly, Mr. Mereness, what your experience has been as a chemical engineer, your education?

A. From 1907 until 1909, those three years, '07, '08 and '09, I was a chemist in three different government laboratories working on arsenal supplies and ordnance materials. In 1912 I was graduated from Harvard with degree of A B. I specialized in chemistry and mining engineering. In 1913 I was with the Government again and the latter part of that time went with the Embree Iron Company of Embreeville, Tennessee, as chemist, and later as chemist and engineer. The work there consisted of routine work principally, on zinc products.

In 1914, at the outbreak of the war, I went with the Du Pont Company as Chief Chemist of their Carney's Point Works, Carney's Point, New Jersey, and I was there all during the war, first as Chief Chemist and later as Supervisor of Laboratories. And then in the Spring of '19 I came with the National Spun Silk Company in my present capacity.

Q. In your capacity as operating chemist for the National Spun Silk Company, have you had experience and have you handled Canton steam waste of the grades No. 1 and No. 2?

(Deposition of Harry Albert Mereness.)

A. My principal—you might say my principal job is the handling of steam wastes and other varieties of raw waste in the preliminary processing stages—that is, what we call boiling off—and that is my principal job; that is what I am paid for doing, in other words.

Q. Have you had occasion to handle or had any experience with Canton steam waste which has been wet with salt water?

A. In an operating way I have not. That is, what I mean by that, in large quantities; I have never had any large quantities. [272]

Q. Have you ever had silk waste, steam waste, wet in the plant?

A. We have had steam waste wet in the plant and also received in cars in wet condition. Just recently we received a shipment wet through from leaky cars, 415 bales wet down pretty well.

Q. Have you had occasion to conduct any experiments at my request with Canton steam waste, wetting it with sea water to observe whether or not there is any danger of spontaneous combustion?

A. During the month of October last year, 1920, at your suggestion, I took some No. 1 steam waste—Canton steam waste—and wet it with sea water and subjected it to a series of drying-out tests with repeated soaking in salt water. In these drying-out tests I gradually increased the temperature of drying from normal room temperature—which I imagine at that time must have been around 75—to something around 285 to 290 degrees Fahrenheit.

(Deposition of Harry Albert Mereness.)

Q. Will you state from your experience in those tests and from your experience with wet Canton steam waste in the mill, whether or not, in your opinion, there is any possible danger of spontaneous combustion in Canton steam waste which has been wet with salt water?

A. In a general way I would say that I cannot conceive of an ordinary condition, either allowing material to dry naturally at ordinary room temperatures or through heating at temperatures below 280° Fahrenheit, of any chance of spontaneous combustion.

Q. You found no evidence—

A. Wait a minute; that question said, wet with sea water?

Q. Yes. A. All right.

Q. In your experiments which you conducted at my request did you find any evidence or tendency for the silk waste to ignite spontaneously?

A. No, none whatsoever. [273]

Q. What happens when the silk waste is wet?

A. When silk waste is wet in a bale we get an ordinary fermentation which causes a local heating. As the bale dries out the heating ceases; if the process of drying out is sufficiently prolonged the silk becomes discolored and when boiled off has a gray cast.

Q. Assume, Mr. Mereness, a cargo of 500 bales of No. 1 Canton steam waste and 367 bales of No. 2 Canton steam waste had been stowed in a hold of a ship which stranded in Puget Sound on or

(Deposition of Harry Albert Mereness.)

about August 1, 1918, and that that hold had become flooded with sea water, and that thereafter the vessel had been floated and the wet bales of waste had been unloaded on an open dock on or about August 7th to August 10th; and assume further that the wet bales had been loaded in refrigerator-cars which had been iced or on about August 15th to 16th, and that said refrigerator-cars loaded with bales and iced had been transported across the continent to Providence, Rhode Island, by a silk train service, occupying a time approximately six days, and had arrived at the mill of the American Silk Spinning Company, the plaintiff in this action, between August 21st and August 30th, a period of from three to four weeks after it had been originally wet,—will you state whether or not, in your opinion, there would have been any danger of spontaneous combustion in the silk?

A. Under the conditions as stated, I do not believe that there would have been any chance for spontaneous combustion to have taken place.

Q. Assume the conditions in my previous question up to the time that the wet silk had been unloaded on the dock at Tacoma, Washington, and had been partially loaded in refrigerator-cars on or about August 15th, and that the silk had previously been wet down, whether or not, in your opinion, there would have [274] been evidence of excessive heating such as to justify an assumption that there would be danger of spontaneous combustion?

Mr. KORTE.—If the answer to the question

(Deposition of Harry Albert Mereness.)

leads up to the exercising of the judgment of an ordinary individual dealing with the particular subject, I object to the question as incompetent, immaterial and irrelevant and the witness is not competent to give his opinion upon the subject; and it calls for the opinion on a subject which an expert is not allowed to state his opinion upon, and it is the conclusion of a given state of facts which the jury or the Court must pass upon.

The WITNESS.—It is a question of fact? That is, I can't—(pausing).

Mr. LYETH.—Strike it all out.

The WITNESS.—No, I can't answer it to save my neck; I can't do it.

Mr. KORTE.—Why can't you?

The WITNESS.—If I had been there I could.

Mr. LYETH.—I didn't hear what you said.

The WITNESS.—I say if I had been there I could. You see the point is this: If I had seen it—I have my idea how it looked, undoubtedly, but the opinion isn't worth anything; somebody else would have to testify as to how it did look. But if you explain to me how the thing felt and looked and whether it was hot or cold and how it smelled, too, if you want—I don't care anything about that—then I could express an opinion as to the condition of the silk at that time.

Q. Assume further that when the silk waste had first been discharged from the vessel, it had heated to some extent and that it had been wet down by hose, and that on August 15th and 16th the heat-

(Deposition of Harry Albert Mereness.)

ing had reduced and that in some bales it had disappeared entirely; that ammonia fumes were coming off,—whether or not, under those conditions, there would have been reasonable ground for assuming that there was any danger from spontaneous combustion in transporting the cargo in refrigerator-cars iced across the continent?

And to that question the defendant objected, on the ground that the question is incompetent, immaterial and irrevelant, and the witness is not incompetent to give his opinion on the subject, and it calls for an opinion [275] on a subject which an expert is incompetent to give, and it is the conclusion of a given state of facts which the jury or the Court must pass upon.

But, notwithstanding said objection, the witness was permitted to answer the question as follows:

A. Under the conditions that you have outlined, I have no reason to believe that there would be any danger due to spontaneous combustion in shipping the cargo.

And to that testimony the defendant excepted, and his exception was allowed by the Court.

Q. Whether or not the icing of the refrigerator-cars would reduce the tendency of the cargo to heat or reduce any possible danger of spontaneous combustion?

A. I didn't catch that question; what do you mean "whether or not"?

Q. Will you state whether or not in your opinion?

(Deposition of Harry Albert Mereness.)

A. Oh, whether or not the icing of the car would help to prevent the thing heating up and so on and so forth?

Q. Yes.

A. Fermentation of the sericine or silk gum takes place ordinarily at temperatures—takes place more rapidly at temperatures around 130° or 140° Fahrenheit, and to the best of my knowledge the temperature in an iced refrigerator-car would so far reduce the temperature as practically to preclude any further fermentation.

Q. From your experience, have you ever observed or heard of Canton steam waste which had been wet either with fresh or with sea water igniting from spontaneous combustion?

A. I have not, no, sir.

Q. Have you ever had the experience of having foreign matter in silk waste ignite in the dryers?

A. The only condition under which I have ever observed a fire in silk—not *of* silk, in silk—a fire in silk, is a case where floor sweepings containing numerous very fine wood splinters had been intimately mixed with degummed silk and dried in a dryer at a [276] temperature of about 300° Fahrenheit, and then piled into a sizable pile and allowed to stand without cooling—simply pile it right into a pile, stack it up.

Q. And what happened?

A. Under these conditions, we noticed a very decided smell of smoke, though none was visible, and in digging into the pile we found that sections say

(Deposition of Harry Albert Mereness.)

a foot in diameter where these splinters had been more numerous were charred; the wood had burned up, the splinters had burned up and the silk had simply charred—always on the inside of the pile.

Q. Had the silk burned itself?

Mr. KORTE.—He says charred.

The WITNESS.—Well, it amounts to the same thing. It amounts to the same thing exactly.

Q. The fire did not spread in the silk?

A. Oh, no. When I unearthed some of it these little splinters—I assume the pine floor—I don't know it, but all these splinters were aglow; the oxygen from the outside would blow over it and they would glow again, but the heat from some of the splinters had charred the silk.

Q. Assume the conditions, Mr. Mereness, in my first hypothetical question; that is, that the wet silk had been transported by silk train service in refrigerator-cars iced, having previously been wet down with hose, and had arrived at the mill in Providence from three to four weeks after it had been originally wet and had immediately been put into manufacture and boiled upon arrival,—whether or not, at the time the silk would have arrived at the mill in Providence, there would have been any weakening of the silk fibre due to fermentation or to any other cause?

A. Very slight, if any. [277]

Q. Assume that this cargo of silk waste had not been forwarded as indicated in my hypothetical question, but had been dried out on the beach at

(Deposition of Harry Albert Mereness.)

Seattle, Washington, by breaking open the bales and exposing them to the air out of doors for a period of about three or four months,—whether or not, at the expiration of that time and after attempting to dry it in this fashion, the fibre would have been materially weakened?

A. Under those conditions I would say that the fibre would be somewhat weakened; to what extent I would not be prepared to say. The word “materially” is a pretty liberal word to use.

Q. Which substance in silk waste do the bacteria attack or work upon first, the sericine or the silk fibre? A. The sericine; the gum.

Q. If the bales of silk waste referred to in my hypothetical question, instead of being forwarded promptly by silk train service in its wet condition, had been dried by opening the bales in the atmosphere at Seattle, Washington, for the period of three or four months, would the bacteria, in your opinion, have attacked and weakened the fibre of the silk in that period to a greater extent than if it had been shipped promptly?

A. My answer to that is, the effect of the bacteria on the silk would undoubtedly be much more marked in the case where the silk was exposed to the elements on an open beach or the open atmosphere.

Q. Mr. Mereness, I show you some silk waste in a bottle marked Plaintiff's Exhibit 13 and ask you to examine that and state whether or not the fibre in that silk has been weakened.

(Deposition of Harry Albert Mereness.)

A. This I assume is first grade steam waste?

Q. No. 1 Canton steam waste.

A. I do not find any appreciable weakening of the fibre.

Q. I show you silk waste contained in bottle marked "Plaintiff's [278] Exhibit 2, Jan. 3, 1921," and ask you to examine that and state where there is any weakness in the fibre, likewise No. 1 Canton steam waste.

A. I find no evidence of weakening of the fibre in this case.

Cross-examination by Mr. KORTE.

Q. Mr. Mereness, when that cargo reached the docks there in Seattle, if they had immediately washed the silk waste, degummed it and then dried it, that would have been the proper thing to do, wouldn't it, or shipped it on to the factory?

A. Yes, even without washing it.

Q. If they had dried it?

A. If you could have degummed it soon enough, within a reasonable time, just let it alone just as it was, it wouldn't have done a thing to it. I never make any efforts to dry out stuff that comes in wet.

Q. When you get a wet bale you leave it out in the open and dry it?

A. Yes, let it take care of itself.

Q. Exactly. Of course, shipping this the distance from Seattle to Providence, taking in the neighborhood of six, seven or eight days—I am not certain which—if the traffic came through ordi-

(Deposition of Harry Albert Mereness.)

narily, it would still ferment on its way, wouldn't it, and in its wet condition?

A. What season of the year was this?

Q. August, 1918. A. This was in August?

Q. Yes.

A. In ordinary cars, yes, I should say so.

Q. And in order to prevent the fermentation you would either have to cool it off entirely, would you not, to keep the bacteria from working—

A. Or cool them to a degree where they couldn't work any more. [279]

Q. Where they couldn't work any more?

A. Where they couldn't work any more.

Q. And it would take refrigeration all the time constantly to that degree, would it not, in the car if you attempted to carry it by refrigeration?

A. Yes, I should say that fermentation takes place very readily in temperatures slightly above 100° and very slowly at temperatures around 40° or 50° Fahrenheit.

Q. That is what I thought; between 40° and 50° up to 100°?

A. Probably below 40°, nothing. I don't know as to that. I have simply observed it in places where it has been wet and the temperatures vary, but I know in the fall when it once gets a little cool it stops, it doesn't bother us any more.

Q. Of course, the cooler the temperature the less fermentation or working of the bacteria will take place? A. Yes.

Q. Would you advise shipping that cargo from

(Deposition of Harry Albert Mereness.)

Tacoma to Providence, Rhode Island, without keeping it constantly wet, without refrigeration?

A. Yes, I would.

Q. You would order that done?

A. I would myself, yes.

Q. And it would have to be watered down at intervals as the cargo moved? A. Yes.

Q. Yes. A. With or without watering down.

Q. You think you would ship it without watering down?

A. Yes, I would have been perfectly—it wouldn't have entered my head, in fact, to question a cargo of silk under those conditions, knowing silk. [280]

Q. Yes, but wouldn't you have to prevent fermentation in order that the fibre wouldn't be attacked? Over-fermentation will attack the fibre, will it not? A. Yes.

Q. The bacteria first destroy the gum and next—

A. The fibre.

Q. The fibre?

A. But your conditions were that it was to get there in seven to ten days?

Q. Yes, but it had been prior to that time wetted for at least fourteen days in a fermenting condition prior to the time it would move on the cars to Providence, Rhode Island?

A. I wouldn't question your statement, but I can't conceive of any fermentation taking place until August the 10th, when it was unloaded.

Q. You wouldn't think it would ferment, then, when it was saturated in the hold of the ship?

(Deposition of Harry Albert Mereness.)

A. With salt water?

Q. Yes. A. No.

Q. It won't ferment with salt water?

A. I don't say it won't ferment with salt water; I say I can't appreciate fermentation taking place at the ordinary temperature of sea water in the hold of that ship.

Q. The Exhibit 13 which you examined, Mr. Mereness, was wetted with sea water and degummed; the period of time was immediately after—at least, it has been degummed, has it not?

A. That? No, it has not been degummed.

Q. Not degummed at all?

A. Partly; loosened.

Q. And loosened to the extent that you can see the fibre? A. Is that this one? [281]

Q. Yes. (Witness examines sample.)

A. In this exhibit the silk gum is entirely loosened from the fibre, but the larger part of the gum is still on the fibre, but it is entirely loose, just as you said.

Q. In loosening it—that is what you call fermentation? A. Yes.

Q. The fermentation loosens the gum from the fibre? A. Yes, absolutely.

Q. Now, as I said, this particular shipment would have to move at least seven days from the time it left Tacoma until it got to Providence in wet condition? A. Yes.

Q. And prior to that time it had been in the

(Deposition of Harry Albert Mereness.)

same saturated condition, but saturated more so, for at least fourteen days?

A. That is true enough.

Q. Now with a shipment of that kind moving, would it not be in a worse condition when it got to Providence, Rhode Island, than if it had been immediately dried at Tacoma or Seattle, or immediately washed?

A. It would have been in a poorer condition than if it had been immediately dried.

Q. Yes. Now, in relation to icing again, Mr. Mereness, isn't it a fact that nothing short of complete refrigeration would stop the fermentation from a chemist's standpoint? It would take complete refrigeration?

A. Well, I answered the question—I answered the previous question pretty completely, I thought, to the best of my knowledge, with reference to temperatures.

Q. Well, yes, just say yes or no—whether it would take complete refrigeration?

A. No, it wouldn't. It wouldn't require complete refrigeration to arrest the— [282]

Q. To arrest it entirely; we are speaking now of arresting it entirely.

A. To arrest it entirely?

Q. Yes.

A. No, it wouldn't complete to arrest it entirely.

Q. But almost so, wouldn't it?

A. My opinion was around 50° Fahrenheit.

Q. Very well.

(Deposition of Harry Albert Mereness.)

A. That is the best of my opinion.

Q. One other question in relation to the experiments which you made down there at the plant.

A. Yes, sir.

Q. I didn't quite catch what you did by way of the amount that you used and how you used it. Will you minutely tell me what you did, what you took?

A. The amount of material I used was roughly six pounds. This I wet thoroughly with sea water and wrapped it into a compact ball and tied it tightly with twine to get it compact. I first placed it in a dark, damp corner—

Q. In a room?

A. Yes, on a cement floor, brick building.

Q. In an open room?

A. Yes, fairly small room; in an open room, fairly small open room—and then allowed to dry as it would.

Q. Of its own accord?

A. Of its own accord. I examined it at the end of that period of time and found that the fibre apparently had not been attacked at all.

Q. Had not, you said?

A. Had not been—and had simply hardened. That is the effect that it had—simply hardened. I repeated the same process of [283] soaking in salt water and drying at various temperatures to and including 285° Fahrenheit.

Q. That is, you used artificial heat to dry it?

A. Yes, artificial heat. I don't know offhand

(Deposition of Harry Albert Mereness.)

how many I ran, but I know my idea was to keep on soaking and heating and heating a little higher; and the reason I didn't go higher than 285°, I couldn't get gas burners enough under the oven to push it up, to heat it higher than that. The final result of these tests left a dry, darkened and hardened fibre. Of course, I was running those to find out if I could cause a spontaneous combustion in any stage of the drying from completely wet to completely dry.

Q. In the first experiment, Mr. Mereness, did you know the rise in temperature? That is the one where you had the ball in the corner and allowed it to dry of its own accord.

A. In this particular case I didn't, because I didn't look for it, because it has been my experience that there is a heating in any kind of fermentation process of that kind, and I wasn't looking for it at all.

Q. Have you ever known or had experience in nitrogenous matter heating to the extent that it would burn or char or flame?

A. Have you any particular substance in mind, or just—

Q. Yes, a raw hair or hay or textile wastes?

A. In my experience, no.

Mr. KORTE.—That is all.

The WITNESS.—I want to say something—

Mr. KORTE.—Another thing I just want to ask.

Q. What is the capacity of your mill down there?

A. The capacity of our mill?

(Deposition of Harry Albert Mereness.)

Q. The capacity of the National Spun Silk Company? A. Well, as is or as was?

Q. When it is running full capacity, that is what I mean—say in 1918, August 1918; a good test. [284]

A. Thirty-five thousand pounds a week, finished yarn.

Q. I have a small sample, Mr. Mereness, of No. 1—I am not certain whether it is No. 1 or No. 2; it isn't material.

A. Well, I will tell you.

Q. (Continued.) —that was saturated in sea water for, I think ten or fourteen days. Will you tell me whether or not the fibre in that has been affected if at all? (Witness examines sample.)

A. As to color, yes, but not as to strength.

Q. I am speaking just of the strength of the fibre?

A. No, not as to strength, as far as I can see. The testimony of a thing like that is a little involved, for one reason. These things vary considerably in strength. What I mean is, No. 1 steam waste is supposed to be a certain thing—

Q. Yes.

A. Well, the No. 1 steam waste that we got at certain times was stuff that years ago they would call bad.

(Envelope containing sample of No. 1 waste marked “#1 for identification. Frank H. Burt, Notary Public.”)

(Sample of No. 2 in small tobacco bag marked

(Deposition of Harry Albert Mereness.)

“Defendant’s Exhibit 2 for Identification. Frank H. Burt, Notary Public.”)

Q. Examine Defendant’s Exhibit #2 and state if the fibre in that bunch of waste silk has been affected and, if so, to what extent, if you can tell.

A. This sample seems to be considerably weaker.

Q. Can you tell the extent of it, so far as commercial purposes are concerned, as to the amount it might be weakened, or would it require you to make further experiments on it to determine it?

A. May I see the other sample again? (Examining sample marked #1 for identification.) This sample seems to be considerably weaker—

Q. Referring to #2 for identification? [285]

A. But how much a man—I couldn’t say from a commercial standpoint without actually degumming it and dressing it.

Q. And determining the yield?

A. Yes, determining the yield. We go by yield entirely of those things, and it is a perfectly fair test.

Redirect Examination by Mr. LYETH.

Q. Mr. Mereness, in answer to Mr. Korte’s question regarding the fermentation of the silk prior to August 10th in the condition assumed in my question and in Mr. Korte’s question, did you have in mind that the silk was immersed in salt water until it had been unloaded on the dock?

A. I had assumed that that was the case.

Q. Will you state whether or not, in your opinion, during that time while the silk was immersed in

(Deposition of Harry Albert Mereness.)

salt water, fermentation would take place?

A. Could, would or did?

Q. Could or would?

Mr. KORTE.—That is in the Pacific Ocean.

Mr. LYETH.—In Puget Sound.

Mr. KORTE.—In August, 1918.

The WITNESS.—In ten days?

Mr. KORTE.—In July and August, 1918?

A. I wouldn't expect any appreciable fermentation in ten days under those conditions.

Q. What effect would the salts in sea water, in your opinion, have with respect with the starting of fermentation? Would it check fermentation or accelerate it?

A. From what I know of similar cases, I should say that the salt water would tend to check fermentation.

Q. Would the subsequent wetting down of the silk after it had been unloaded on the dock tend to check fermentation?

A. I should say it would tend to increase it.

Q. You spoke about drying the silk waste at Seattle in the bales. [286] Whether or not that could be accomplished without artificial heat in the climate that is known to exist at Seattle and Tacoma, Washington?

Mr. KORTE.—In July and August, 1918.

Q. In August, September

The WITNESS.—Outdoors or indoors?

Mr. LYETH.—In August and September.

(Deposition of Harry Albert Mereness.)

The WITNESS.—Well, which was it, outdoors or indoors?

Mr. LYETH.—Either one.

The WITNESS.—Indoors it would be perfectly possible to have dried this silk down to the ordinary moisture content of ten per cent at Seattle, Washington, at that time.

Q. Within what time?

A. It would depend entirely upon how thick you spread it.

Q. (By Mr. KORTE.) You would have to break the bales? A. Oh, yes.

Mr. LYETH.—That is what I meant.

The WITNESS.—You have got to break the bales.

Mr. KORTE.—Certainly.

Mr. LYETH.—That is what I meant.

The WITNESS.—What is your question?

Mr. LYETH.—In the bales.

The WITNESS.—Oh, we don't care anything about it if it is in the bale; let us go back, Mr. Lyeth, to that question.

Q. (By Mr. LYETH.) If in the bale, what would your answer be? A. No.

Q. Having in mind 867 bales of silk waste, can you give some idea of what floor space indoors would be required to spread it out and dry it indoors?

A. How many bales?

Q. 867 bales. Just roughly. [287]

A. To dry it at one time indoors, or out if it didn't rain, I should say would take something over 225,000 square feet for the 867 bales. I had occa-

(Testimony of Fred J. Alleman.)

sion to do this thing just the other day, so that is how I got the idea.

Testimony of Fred J. Alleman, for Defendant.

And thereupon, without offering further evidence, the plaintiff rested; and the defendant, to prove the issue on his part, called as a witness FRED J. ALLEMAN, who gave the following testimony:

Q. (By Mr. KORTE.) State your full name.

A. Fred J. Alleman.

Q. What position do you hold now and did you hold in 1918 with the Milwaukee road, or the Railroad Administration at that time?

A. Freight agent at Tacoma, Washington.

Q. What was your position?

A. Freight Agent at Tacoma, Washington, including the local office and the docks.

Q. You are the head, then, of the Freight Department in the City of Tacoma and what has to do with freight at that point? A. Yes, sir.

Q. And do you have what is known as the up-town office, or the office proper? A. Yes.

Q. And where is that located in the city with reference to the docks?

A. At East 25th and D Streets, is where the freight office is located, and that is about three miles from the docks.

Q. About three miles from the docks?

A. Yes, sir.

Q. Your office proper, then, is what is known as the up-town office? A. Yes. [288]

(Testimony of Fred J. Alleman.)

Q. That includes the freight-sheds there where the trains bring in freight and take out freight?

A. Yes.

Q. And what force have you operating there?

A. I have an assistant agent and clerical forces sufficient to carry on the work.

Q. Then you have charge of the docks?

A. Yes.

Q. How many docks, if there are more than one, and where are they located?

A. There were three docks at that time in service; No. 1, No. 2 and No. 3, and they are located on what is known as the Milwaukee Channel.

Q. That is on Commencement Bay? A. Yes.

Q. And those are the docks against which the ships from sea come and unload the freight?

A. Yes.

Q. And what force have you, or did you have at that time, operating those docks?

A. I had a chief clerk at each dock in charge of the office work; sufficient clerical help to carry on that work, and also a general foreman and an assistant general foreman, and the necessary labor to carry on that work.

Q. You had a man there by the name of Cheney?

A. Yes.

Q. What was his full name?

A. Calvin R. Cheney.

Q. And what position did he hold at the docks?

A. He held a position as chief clerk.

(Testimony of Fred J. Alleman.)

Q. And what authority did he have as chief clerk?
[289]

Mr. SHORTS.—I object to that question upon the ground that it is incompetent, irrelevant, immaterial and calling for a conclusion.

Mr. KORTE.—They have put in proof here from Mr. Taylor that he talked with a man by the name of Cheney.

The COURT.—I understand that. The objection may be overruled.

Q. Go ahead and define what authority he had, if any, with reference to what he had to do.

A. Mr. Cheney's work consisted—he was in charge of the office at the clerical end; with clerks under him, and had general supervision of the office.

Q. Now, beyond him, you had then what you call the Dock Foreman? A. Yes.

Q. And what were his duties?

A. The duties of the Dock Foreman were to have charge of the discharging of steamers, the loading of steamers, the unloading of cars to and from the warehouse.

Q. Where is Mr. Cheney's office and where did Mr. Cheney work in the dock, with reference to where the ship involved in this lawsuit unloaded?

A. At the extreme north end, at what is known as Dock No. 1.

Q. How far would his position, or place where he would work, be from the place where the unloading would be carried on? A. A thousand feet.

Q. Describe generally to the Court where Mr.

(Testimony of Fred J. Alleman.)

Cheney was located and where this unloading was going on.

A. Well, what is known as Dock No. 1, 960 feet long by 175 feet in width. This is north and south (illustrating) and the dock office is in the extreme northeast corner of Dock No. 1. The unloading was done at the south end of this 960-foot dock.

Q. Assuming that this piece of furniture here would represent the dock, where would Mr. Cheney's office be and where was the unloading carried on?
[290]

A. On that northeast corner of that counter, and the unloading would be going on right here (pointing), assuming that there was another dock beyond there.

Q. Now Mr. Alleman, can you remember when the "Maru" ship was stranded at Cape Flattery?

A. I do.

Q. And you had information that there were cargoes on there that would have to be handled through your dock? A. I did.

Q. Were you present when the ship was first docked? A. I was.

Q. Do you remember the date when it first docked at the Milwaukee dock? A. I do.

Q. Give it, please.

A. About nine A. M. August 10th.

Q. Was that when it first came? A. Yes.

Q. And then did it stay there to unload?

A. They undertook, or rather started to unload,

(Testimony of Fred J. Alleman.)

but she took water so fast that they had to give it up.

Q. Where did it go then?

A. They took her to what is known as the Todd Drydocks.

Q. And how long did the ship stay at the Todd Drydocks?

A. Until some time during the night of August 11th.

Q. And when did it commence to unload?

A. Some time during the forenoon of August 12th.

Q. Did you go on board the steamer when it first came there, or when it started first to unload, or at any time? A. I did.

Q. Was it at the time when the ship first docked, or when it returned from the drydock that you went on board? [291]

A. More particularly after she came back from the drydock.

Q. How much time did you put in that day about the ship?

A. Oh, I would say at least an hour.

Q. Then, with reference to that time—I may not have the time in my mind exactly—but what, if any, instructions or orders did you give with reference to the damaged cargoes on the ship, so far as the taking possession of them by the railroad or the handling of them and shipping them?

Mr. SHORTS.—I object to that on the ground that it is incompetent, irrelevant and immaterial as to what instructions were given and as not binding on the plaintiff.

(Testimony of Fred J. Alleman.)

The COURT.—As I understand, the question in this case is whether the railroad ever accepted these goods for shipment.

Q. (Mr. KORTE.) What orders did you give, if any, with reference to the damaged cargo?

A. On August 10th, after the steamer had docked and started to discharge cargo, and noticing the condition of the two forward hatches, I issued instructions that under no circumstances was any part of the damaged cargo to be accepted in the warehouse.

Q. Where did you say it should be placed, if at all?

A. It was to be placed on the open space between what is known as Dock No. 1 and the Gillespie Oil Shed.

Q. After that what did you do and where did you go.

A. August 10th, do you refer to?

Q. Yes; after you gave those orders.

A. I watched the discharging for some little time and saw the condition.

Q. And was it on— A. On August 10th.

Q. On August 10th she went to the drydock, didn't she? A. Yes, but she discharged some of it.

Q. Well, go ahead.

A. I watched the discharging of some of the cargo. [292]

Q. Was any part of the silk cargo involved here at that time discharged?

A. Not that I know of.

Q. Go ahead.

(Testimony of Fred J. Alleman.)

A. After watching the discharging for perhaps three-quarters of an hour, I left and went back to my own office to carry on other business.

Q. Your duties took you to your office where your principal duties were?

A. Yes; and later in the day I was informed that the steamer had to go back to the drydock; that it was unsafe.

Q. Then when the steamer came back from the drydocks and started to unload, did you go down to observe it? A. I did.

Q. What date was it and when did you get down there?

A. Some time during the forenoon of August 12th; I am unable to state the exact time.

Q. Did you at that time observe the condition of the cargo as it was coming out of the hold of the ship? A. I did.

Q. What cargoes were first unloaded, and when did they start unloading the silk waste involved in this case?

A. The first cargo that I took particular notice of was matting, tea, rice, beans and some waste silk.

Q. What was the condition of that cargo?

Q. The entire cargo was thoroughly and completely saturated with salt water.

Q. Then did you note the silk cargo as it was being unloading.? A. To some extent, yes.

Q. Did you go up on the ship and look in the hatches at all? A. I did. [293]

Q. Tell the condition of that cargo as it was being

(Testimony of Fred J. Alleman.)

lifted out of the hold of the ship, and what condition it was in.

A. I was on board this steamer a number of times on that particular date, and I noticed that the water was only being pumped out sufficient for the men to unload the slings; and I asked the question why the men to a large extent were walking in water and handling wet cargo; that it seemed to me could have been eliminated by pumping the water more rapidly; and I was informed at that time by the men in charge of the pump that it was necessary to keep the cargo completely flooded; that due to the heat developing in the steamer—

Mr. SHORTS.—(Interposing.) I move to strike that out as hearsay.

Mr. KORTE.—I think that is part of the *res gestae*, to show what was actually going on.

The COURT.—He can tell what was going on, but not what they told him.

Q. (Mr. KORTE.) Go ahead and tell what you saw yourself with reference to the bales as they came out,—did you note whether or not they were heating? A. They were.

Q. Or were hot? A. They were.

Q. Tell their condition as they appeared to you as they came out of the hold, the first ones.

A. The bales were somewhat hot; somewhat warm, I would say; but not as warm as later on; due to the fact that they were thoroughly submerged in water.

(Testimony of Fred J. Alleman.)

Q. Did you note then the cargo as it generally came out later on?

A. I did, off and on during the entire discharging.

Q. And how were they, with reference to heating, as they got down into the bottom of the hatch?

A. As soon as the cargo was exposed to the air and the water being pumped out, the cargo would heat. [294]

Q. You then placed this cargo, where?

A. Some of the cargo was placed in this open space between Dock No. 1 and the oil-sheds. The beans and rice, almost in its entirety, were placed on scows.

Q. Did the beans and rice come out of the same hatch in which the silk was located? A. Yes, sir.

Q. And this space which you speak of between the dock and some other platform, was that in the open or under the shed? A. In the open.

Q. Now, that was the 12th that you were there?

A. Yes, sir.

Q. Did they unload the entire cargo of waste silk on the 12th or did—

A. (Interposing.) They did not.

Q. —or did it take longer? A. Yes.

Q. How long did you stay there on the 12th?

A. I was there on several occasions. I was there in the forenoon and I was there again in the afternoon.

Q. Did you see Mr. Taylor there at that time, or have any talk with him, on the 12th?

A. I didn't know Mr. Taylor, if I saw him.

(Testimony of Fred J. Alleman.)

Q. You had no talk with him on the 12th then?

A. None whatever.

Q. Then you went back to your general offices to attend to your duties again that day? A. Yes.

Q. And when did you go down there again?

A. I was again on the dock on the 13th.

Q. What time of day did you get down there on the 13th?

A. I am unable to state the exact time, but it was some time [295] during the forenoon.

Q. When you got down there what did you find with reference to the silk waste and the two refrigerator-cars?

A. There were no cars spotted at that time.

Q. On the 13th? A. When I was on the dock.

Q. How's that?

A. No cars spotted at that time.

Q. What time of day was it that you were there?

A. It was some time during the forenoon.

Q. How long did you stay there at that time?

A. Perhaps an hour.

Q. Did you go about to examine the damaged cargoes that were being unloaded? A. I did.

Q. Did you note the waste silk that was being unloaded?

A. I noticed it in the same manner that I did the other cargoes.

Q. And were any of the other cargoes heating?

A. They were all more or less heating on the platform.

Q. And did you note the character of the waste

(Testimony of Fred J. Alleman.)

silk, as to whether it was still heating?

A. It was heating.

Q. You said you were there about an hour on the 13th; did you see Mr. Taylor there at all, or anybody? A. I did not.

Q. You had no talk with him on the 13th?

A. I did not.

Q. Where did you go after you left the docks that day? A. I went back to the office.

Q. To your general office? A. Yes.

Q. To attend to your general duties?

A. Yes. [296]

Q. And when did you go back to the dock?

A. About 9.00 A. M. of the 14th.

Q. When you got down there what did you find, with reference to the waste silk?

A. When I got to the dock on the morning of the 14th I found two cars of this silk waste had been loaded. They had been opened prior to my arrival.

Q. What do you mean by opened?

A. The doors had been opened prior to my arrival, and Mr. Hennessey and Mr. Wheeldon.

Q. Who is Mr. Hennessey?

A. Mr. Hennessey is the general foreman and Mr. Wheeldon is the sub-foreman.

Q. What did they do?

A. They called my attention to the fact that these cars had been loaded on the previous afternoon and had been sealed up during the night.

Q. What do you mean by sealed up?

A. The doors had been sealed.

(Testimony of Fred J. Alleman.)

Q. By whom? A. By the Customs.

Q. And they were the dock foremen?

A. They were the dock foremen.

Q. And what were they doing to that car when you got there?

A. They were sprinkling both cars, or the contents of both cars, with water at the time that I arrived, and they called my attention to the condition of the contents. At this time the fumes and steam and heat were still coming from the doors and through the vents of the two cars.

Q. Did you examine it physically? A. I did.

Q. What did you do by way of examining it?
[297]

A. I moved the bales to the side and got my hands in on all sides of a number of bales.

Q. And how were those bales heating as compared with the bales when they first came out of the hold, as you told us?

A. The heat was greatly intensified.

Q. About what temperature, or how high was the heat in Fahrenheit, in those bales when you felt of them with your hands?

A. The two cars, when I felt of them, were in excess of 135° Fahrenheit, and how much higher I can't say.

Q. What knowledge, if any, did you have that those two cars were loaded with the waste silk as you found them there that morning?

Mr. SHORTS.—I object to that as irrelevant, immaterial and incompetent, and I do not see what

(Testimony of Fred J. Alleman.)

possible bearing the knowledge of this man can have.

The COURT.—He was the man in charge of the freight office and the freight business in this city at that time.

Mr. KORTE.—That is the point; he is the only one that could bind the company.

Mr. LYETH.—I object to that statement of counsel. I trust that you are not testifying, Mr. Korte.

Mr. KORTE.—No, I am just suggesting to the Court what my point is.

The COURT.—I think he can answer the question.

(Question repeated to the witness as follows:)

Q. What knowledge, if any, did you have that those two cars were loaded with the waste silk as you found them there that morning?

A. None whatever.

Q. And the first you learned of it was when you got down there that morning?

A. When I arrived there at the dock.

Q. Then when you found them heating, as you have described, what did you do about it?

A. I immediately ordered the foreman, Mr. Hennessey, to get hold of a switch engine and pull them away from the docks, to an open [298] space where, in case of a fire, which I was afraid of, they would not endanger other property.

I also instructed the foreman to place a man in charge of a hose and to keep continually washing down the contents of those two cars until it could

(Testimony of Fred J. Alleman.)

be decided as to what was to be done with the contents.

Q. Now, what made you feel that there might be a fire result from the condition of those bales?

A. Due to the fact that I have seen uncured hay—I have seen manure piles and grain heat up to an extent of where they would char, and coming in contact with other foreign substances, creating fires.

Q. And the heating of these bales, did that or did it not act similarly to the things which you described had charred and burnt other things?

A. They certainly did.

Q. After you had pulled the cars out into the open and ordered water poured on them until it could be determined what would be done with them; what did you do?

A. It just so happened that—

Q. How is that?

A. I say, it so happened that Mr. Wilkinson—

Q. Who is Mr. Wilkinson?

A. He was the inspector of the freight-train department.

Q. From where? A. From Chicago.

Q. And where is Mr. Wilkinson now?

A. Mr. Wilkinson died in 1919.

Q. Proceed.

A. It so happened that Mr. Wilkinson was on the docks some time later on the same date, and I said to him, "You are just the man that I want to see. We have two cars here that are extremely [299]

(Testimony of Fred J. Alleman.)

hot—that is the contents is extremely hot”—

Mr. SHORTS.—I object to this conversation with the deceased man.

Mr. KORTE.—I think the declarations are admissible. It seems to me that anything that might have been said by way of a declaration at the time would lead up to his anxiety and show his reasons for refusing them, if he did refuse them, and I think it is material.

The COURT.—He can state what Wilkinson told him to do.

The WITNESS.—What instructions?

Q. (Mr. KORTE.) What was said between you and Mr. Wilkinson as to what should be done with those two cars?

A. We talked over the situation, and he agreed with me that the silk was dangerous, or that the contents were dangerous and should not be forwarded, and we agreed between ourselves that the only authority that we would accept to forward the contents would be from Mr. Earling, the vice-president.

Q. Will you tell that over again, Mr. Alleman; I don't think counsel heard you.

A. We agreed between ourselves—

Mr. SHORTS.—Well, I want to insist on this objection. I think it is entirely objectionable testimony.

The COURT.—We admit it subject to your objection for whatever it may be worth hereafter, as this is a trial before the Court, and you can have the

(Testimony of Fred J. Alleman.)

record, of course, if it is incompetent.

Q. (Mr. KORTE.) Go ahead; what did you and Mr. Wilkinson decide upon with reference to the silk?

A. We decided that the dangers were so great that it would be entirely impracticable and wrong for us to endeavor to forward that cargo, unless it was authorized by the highest authority on the Coast, of the Milwaukee Railroad Company, which was Mr. Earling.

Q. Now, what was the general unfitness of the cargo itself, that [300] is, the silk?

A. It was very obnoxious; the fumes coming from it were very obnoxious and undesirable.

Q. And did that enter into your decision with reference to refusing the cargo?

Mr. LYETH.—Our objection to that is, that it is calling for the feelings of the witness and it is not competent testimony.

The COURT.—As I said a moment ago, this trial is before the Court and your objections are in the record and you will have the advantage of them for what they are worth hereafter. It is not necessary to be as particular as if it were being tried before a jury.

A. To some extent they did, but the prime factor I had in mind at all times was the danger to life and property due to fire.

Q. Later on, Mr. Alleman, did you find any difficulty in handling the cargo through objections on the part of the men because of its unfitness?

(Testimony of Fred J. Alleman.)

A. We did.

Q. Describe what you did with those two cars later on, with reference to the silk which had been loaded into them.

A. It must be borne in mind that we were continually watering these cars, or the contents of these cars until the 16th of August. On that day we unloaded them on the ground.

Q. Go ahead, and tell what, if any, difficulty there was in unloading that cargo by way of handling it through the men that you had.

A. We had some difficulty in getting the men to handle the contents.

Q. What objections did they make?

A. The fumes and the heating is what they objected to; but not so great at that time as we did later.

Q. This particular lot was kept wetted down every day until it was unloaded? A. Yes. [301]

Q. And then when you unloaded this from the car, where did you place it?

A. On planks that were laid on sand between the two docks—I am speaking now of Dock No. 1 and Dock No. 2—farther away from the platform than what the other wet cargo was.

Q. Now, describe how you piled those bales of silk in this car on the ground.

A. They were piled three bales each, lying flat.

Q. Had the rest of the cargo in the meantime been unloaded from the ship? A. It had.

Q. And where was that piled?

(Testimony of Fred J. Alleman.)

A. That was piled on the open platform between Dock No. 1 and the Gillespie Oil Shed.

Q. Which you have already described?

A. Yes.

Q. And what was there with reference to an oil industry or an oil shed?

A. There are several oil industries in that vicinity.

Q. How near were those piles to any one of those sheds?

A. Just a six-inch wooden wall between the open shed and the oil industry.

Q. Who were the ones operating that particular shed? A. Gillespie & Sons of New York.

Q. And what, if any, objection did they make to this particular cargo being piled up against this shed while it was there, and what reasons did they give or state to you about it?

A. I can't say just what particular objections were raised, except that they were afraid—

Mr. SHORTS.—I object to that.

The COURT.—I do not think that is very material as to what they were afraid of. [302]

Q. (Mr. KORTE.) Was there any objection because of the fear of fire?

Mr. SHORTS.—I object to that.

A. They were afraid of fire.

Q. What did you do with that cargo, with reference to moving it at any time—that cargo that was left on the platform; was it always left there or did you move that off a ways on the ground?

(Testimony of Fred J. Alleman.)

Mr. LYETH.—I object to this fashion of leading the witness.

Mr. KORTE.—I will change the question.

Q. What did you do with the remaining portion of the cargo that was piled on the platform?

A. The remaining portion that was left on the platform, which consisted of tea, matting—

Q. (Interposing.) I am speaking now of the silk cargo; what did you do with the remainder of the cargo, aside from those two cars?

A. That remained on the open platform until August 29th, and it was sprinkled with water daily.

Q. And how were they piled on that platform, with reference to depth and width?

A. Part of it was piled on ends and part of it was piled on the sides, approximately, three deep.

Q. When you speak of on end, was it one pile deep or more?

A. What I call ends is the two ends; and then the sides. As I recollect, those bales were about three feet in length.

Q. And they were piled three deep?

A. On end, one deep, and on the sides, three deep.

Q. Were you backwards and forwards there to the place while the cargo remained in that condition? A. I was backwards and forwards daily.

Q. And what did you do by way of keeping the heat down, if at all?

A. Continually kept soaking it with fresh water.

[303]

Q. How's that?

(Testimony of Fred J. Alleman.)

A. We were continually soaking it with water.

Q. Every day? A. Every day.

Q. And did you note whether it was still heating?

A. It was, but not to the same degree that it did the first ten days.

Q. Did you at any time see Mr. Taylor and have a talk with him with reference to this cargo?

A. I did.

Q. When was that?

A. I am not positive. It seems to me it was about one P. M. of the 14th.

Q. Of August?

A. The 14th of August, after I had rejected the cargo. Mr. Taylor—

Q. (Interposing.) Go ahead.

A. Mr. Taylor met me on the open platform just south of Dock No. 1 and he says, "I understand you are refusing to let this cargo go forward," and I told him I had, and he tried to persuade me—telling me that there was no danger; no fire risk and that it was entirely safe for the cargo to go forward.

Q. What did you tell him?

A. I told him that from my experience and from what Mr. Wilkinson had said to me, that there was no other way that that cargo could go forward except on Mr. Earling's authority; and that pretty near ended the conversation. He asked me where he could see Mr. Earling; and that practically

(Testimony of Fred J. Alleman.)

ended the conversation; and that was the only time I had any talk with Mr. Taylor.

Q. After that talk, then what did you have to do with the cargo in the meantime, except to care for it as you were doing by sprinkling it down?

A. Nothing further. [304]

Q. When did you have anything to do again with that cargo, and under what circumstances?

A. Nothing further until on August 29th Mr. Taylor authorized or ordered us to load it into boxcars for shipment to the North Pacific Sea Products Company.

Q. Where was that located?

A. That was located in Tacoma.

Q. And then what did you do with reference to handling the cargo and loading it into the cars?

A. We started to load it into the cars at that time.

Q. What trouble, if any, did you have in trying to get it loaded, if at all?

A. The gang started to load two of the cars from the ground that had previously been loaded into the refrigerators, and after loading, perhaps, less than a third of one car, the men began to get sick and finally they positively refused to work.

Q. That gang?

A. That particular gang; and we later persuaded another gang, by allowing them some extra time, to finish the loading of those two cars.

(Testimony of Fred J. Alleman.)

Q. What difficulty did they have or experience to your knowledge?

A. They had the same difficulty; not quite as severe as the first gang.

Q. What trouble did they have by way of handling it?

A. The extreme ammonia fumes and the heat that still remained in the cars made the men sick.

Q. Then when that gang had loaded those two cars that had been unloaded from the refrigerator-cars, what other cars were loaded and by what men?

A. By the same gang that had refused to load the cars that had been previously loaded—the same gang loaded one car from the open platform without any particular difficulty. [305]

Q. Did you note the heating of the bales while they were being loaded into cars for this shipment ordered by Mr. Taylor? A. I did.

Q. Tell the Court how hot the bales were, to your knowledge. A. At this time?

Q. Yes.

A. The bales were still very hot, although not as hot as they were at the time they were unloaded from the two refrigerator-cars.

Q. Had those bales been kept wet during all of this period from the 14th to the 29th?

A. They were kept wet, and being out in the open air—

Q. And then you say you loaded the whole of the cargo into cars, and where was it taken then?

(Testimony of Fred J. Alleman.)

A. It was placed to the North Pacific Sea Products Company.

Q. And then it eventually went to Seattle, as described by Mr. Taylor? A. Yes.

Q. I think you said that certain of the other cargo, wheat and rice and beans, were loaded on scows? A. Yes.

Q. And was that stuff heating at the same time that you were examining this cargo?

A. It heated to such an extent on the scow that it charred.

Q. You spoke of your experience in connection with hay; green hay heating and setting on fire; now, describe that experience to the Court, which you have had personal knowledge of.

A. In my younger days, up to the time I was about twenty-one years of age, your Honor, I was raised on a farm, and I have at different times seen improperly cured hay heat up to such an extent that it had charred the entire inside and whenever the air reached such stacks it would blaze out. I have seen that many [306] a time. And the heating of the contents of those two cars acted in a similar manner.

Cross-examination by Mr. LYETH.

Q. Where are the manifests, Mr. Alleman?

A. In several locations; one in the Osaka Shosen Kaisha's office; that is the Steamship Company's office; and one in the Customs Office and one in Mr. Cheney's office.

(Testimony of Fred J. Alleman.)

Q. Mr. Cheney had the manifest of this particular vessel? A. Yes, sir.

Q. (Mr. KORTE.) This cargo moved in bond, did it?

The WITNESS.—Yes.

Q. (Mr. LYETH.) Why did you keep a set in Mr. Cheney's office? A. Why?

Q. Yes.

A. In order to arrange for the forwarding and the settling of accounts with the Steamship Company.

Q. You have, of course, through arrangements with the Osaka Shosen Kaisha's Company?

A. Yes.

Q. Through billing and freighting arrangements?

A. Yes.

Q. How are cars ordered to the docks?

A. How are they ordered ordinarily?

Q. Yes—physically, how is the order given?

A. The cars are ordered by the foreman, usually.

Q. Any written order?

A. Not unless they come from connecting lines.

Q. And these bales which you say were unloaded from the refrigerator-cars were not placed on the dock?

A. Not in the same location that they came from.

Q. Well, were they on the dock or were they not?
[307]

A. At the time they were unloaded the second time?

(Testimony of Fred J. Alleman.)

Q. Yes.

A. That is when they were unloaded from the refrigerators?

Q. Yes.

A. No, sir; they were placed in an open space farther away from the dock, and unloaded on planking.

Q. Then they were not on the dock at all?

A. Not at that time. Originally—

Q. (Interposing.) Did you put them on the beach?

A. On the sand—by spreading planking on the sand.

Q. Well, that is on the beach; that is not on the dock at all.

A. Well, what I undertsand by the beach is the sand beach leading out to a body of water. This is not the same thing.

Q. Haven't you got a body of water there?

A. We have a body of water there, but it is confined in a channel; and where these bales were placed at the time of unloading is much higher ground than what the tide brings the water in, and we built up—

Q. (Interposing.) Was it higher than the dock itself?

A. Not higher than the dock itself but about the same level so far as the body of water is concerned.

Q. Then it was on the beach, or the sand leading to the water off the dock, was it?

(Testimony of Fred J. Alleman.)

A. That is what you might call it; yes.

Q. You spoke about the beans and the rice that were unloaded on the scows; were any of those unloaded on the dock?

A. At the start, yes, they were.

Q. Well, there were some unloaded on the dock?

A. Yes.

Q. And piled in the vicinity of the waste silk; is that true?

A. A small portion. [308]

Q. Did those take fire?

A. They didn't take fire on the dock.

Q. They charred, did they?

A. They charred on the scow.

Q. Did they char on the dock?

A. They didn't char on the dock. They were removed from the dock to the scow.

Q. The beans and the rice then on the scows took fire?

A. I would not say that they actually took fire and blazed, but they took fire to the extent that they were charred and were all dumped overboard.

Q. Did you see them charred?

A. I saw them.

Q. Where? A. On the scow?

Q. Where was that?

A. Loaded alongside the dock.

Q. They were alongside the dock? A. Yes.

Q. How were those beans and rice unloaded; were they unloaded on the dock and then on to the scows

(Testimony of Fred J. Alleman.)

or directly outside into the scows from the ship's tackle?

A. To start with, they started to discharge them on the dock, a very small portion was placed on the dock, when they brought up scows and discharged them directly from the steamer to the scows.

Q. The scows were placed outside of the steamer?

A. Outside of the steamer.

Q. Away from the dock?

A. And then they were later anchored alongside the dock.

Q. Were they tied to the dock? [309]

A. Partially tied to the dock and made fast.

Q. And you saw them charring?

A. I saw them charring.

Q. When did you see them charring or burning?

A. It was some time after the steamer had finished discharging; I could not say as to the exact date; the 16th or 17th or 18th.

Q. Somewhere between the 16th and 18th?

A. Yes.

Q. Did you go on the scows?

A. I got on the scows.

Q. You got on the scows? A. Yes.

Q. And there was a fire?

A. I could not say that it was on fire—they charred and heated to such an extent.

Q. Did they set fire to the scows?

A. They did not.

Q. Did it char the wood on the scows?

(Testimony of Fred J. Alleman.)

A. I could not say that it charred the wood on the scows.

Q. But there was char?

A. That is not what I said.

Q. I beg your pardon.

A. I said they charred.

Q. Let us get down to what you mean by charred.

A. Heating to such an extent where it will eliminate itself into ashes, and still not blaze out.

Q. Then you mean by charring, disintegrating?

A. Perhaps that is what you might call it.

Q. Then you do not say that there was a flame?

A. I didn't say there was a flame.

Q. Did they show evidences of having been burned?

A. Evidence of having burned? [310]

Q. Were they black?

A. They were blackened.

Q. Were they smoking?

A. They certainly smoked.

Q. I mean were the beans smoking; did you look at them?

A. There was very little of them left. They just charred themselves to nothing; to ashes, you might say.

Q. Then they dumped overboard a scow-load of ashes, is that it? A. Principally that.

Q. You could not recognize them as beans or rice? A. You could not.

Q. They just looked like ashes; is that it? And

(Testimony of Fred J. Alleman.)

so they dumped overboard a scow-load of ashes instead of beans and rice?

A. What were originally beans and rice.

Q. And it had gone to ashes?

A. To some extent.

Testimony of A. H. Barkley, for Defendant. L

And to further prove the issue on his part, the defendant called as a witness A. H. BARKLEY, and he gave the following testimony:

Q. (By Mr. KORTE.) What is your full name?

A. A. H. Barkley.

Q. And what position, Mr. Barkley, did you hold in August, 1918, with the Railroad Administration operating the Milwaukee roads?

A. Chief Clerk to the General Manager.

Q. Who was the General Manager?

A. Mr. H. B. Earling.

Q. And where was his office and your office?

A. In the White Building.

Q. Here in Seattle? A. Yes. [311]

Q. Do you know Mr. Taylor who testified here on the stand? A. Yes.

Q. Had you known him before August, 1918?

A. No, sir, I never saw him.

Q. When did you first meet him?

A. I think it was along about the 17th or 18th of August that he came into my office.

Q. 1918? A. Yes, sir.

Q. He came into your office? A. Yes, sir.

(Testimony of A. H. Barkley.)

Q. And what was his errand that day?

A. Why he told me of the damaged silk cargo on hand at Tacoma and of the refusal of our people to send it forward, and he was very anxious to get it removed, to get it off his hands, and he wanted to know if special arrangements could not be made to have it forwarded in some manner, and suggested that it might be loaded into refrigerator-cars and kept iced and watered down at division terminals and, possibly, messengers sent along with the cars. He was entirely willing to assume all of the expense involved in connection with such special arrangements.

Q. You went over the situation with him along those lines? A. Yes.

Q. And that is what he said?

A. I told him also that our local people at Tacoma—

Q. I didn't hear you.

A. I told him that our local people in Tacoma; our freight claim department and all our people so far as I had heard who had anything to do with the matter seemed to be opposed to handling it, and that before we could make any arrangements for forwarding we would want very positive assurance from some outside person competent to pass on such matters, to the effect that we could [312] forward this without any undue risk. Mr. Taylor dwelt considerably on his opinion of the condition of the cargo and seemed to be perfectly satisfied that

(Testimony of A. H. Barkley.)

it was safe and that our people were unduly alarmed about the heating indications. He said he was perfectly agreeable to leave it to us to make arrangements with any competent outside cargo surveyor to look the cargo over, and that he would be agreeable to abide by our refusal, in case such an outside cargo inspector considered it was unsafe, or would involve undue risk to handle it.

I told him that in case we made such an inspection he would have to stand the expense. He was perfectly agreeable to that, and he also said that if such an outside cargo surveyor conditioned his recommendations as to handling it, on taking any certain precautionary measures to safeguard the movement, that he would be entirely willing to assume any such special expense, and that in addition to anything that our own people might think was necessary.

I also told him that I was sure that our people would insist on a contract being drawn up and signed before we could move any such cargo, that would absolutely relieve us from all responsibility, and that would set out the special service and to the conditions involved.

I told him further that I had no authority to make any such special arrangements; that I was simply the Chief Clerk to the General Manager, and on his request I promised to get in touch with the General Manager and see whether he was willing to consider any such special arrangements.

(Testimony of A. H. Barkley.)

Q. And did you get in communication with Mr. Earling then?

A. I did, either that day or the following day, I am not sure which.

Q. And what did Mr. Earling say?

A. We did not get a response for a couple of days; and when we did it was to the effect that there would be no objection, providing [313] that all of the conditions that I had outlined were satisfactorily met.

Q. You outlined the same conditions to him which you have recited?

A. The same conditions I have recited, yes. And he warned me though, to make sure—

Q. What was that?

A. —to make sure that the cargo was thoroughly inspected, and that all precautionary measures which we considered necessary were taken.

Q. Then, after you heard from Mr. Earling, as you relate, what did you do after that?

A. Well, I think I got that word about the 21st and I immediately phoned Mr. Taylor's office. He was not in. I left a call and he came in some time during the day and we discussed the matter. I told him what Mr. Earling had said; that there would be no objection to going ahead with the negotiations looking toward handling the cargo on the basis of the conditions we had previously discussed. As a matter of fact, I think we had discussed them in the meantime. He had been in to

(Testimony of A. H. Barkley.)

see me to see if we had got word back. I reminded him of his agreement to abide by our refusal to handle in case any outside cargo inspector were selected considered that it was unsafe, or would involve undue risk, and I told him that he would not only have to assume the expenses of the inspection, but in case such outside surveyor did consider it was safe to handle it and outlined any special precautionary measures to safeguard the movement that he would have to take care of that expense as well as any arrangements our own people thought might be necessary. Also that he would have to execute a liability release; all of which he was perfectly willing to do.

Q. And what, if anything, was said or done about determining the legality of that transaction? [314]

A. I did not do anything at that time. We had not got along to the preparation of any such agreement, that would depend on the details of the arrangements, and I did not think it was necessary.

Q. After you told Mr. Taylor that, what did you do?

A. Later on that same day I tried to get in touch with Mr. Williams, our real estate tax agent, who handles insurance matters, but I did not get hold of him until later in the afternoon, as I recall it. I told Mr. Williams of my negotiations with Mr. Taylor. I asked what he thought about consulting Balfour-Guthrie & Company as to making a selection.

(Testimony of A. H. Barkley.)

Q. Who were Balfour-Guthrie & Company?

A. They are large cargo handlers. They handle cargoes from all parts of the world—as to making a selection of a disinterested cargo surveyor to make the examination. Mr. Williams agreed with me that Balfour-Guthrie & Company would be a good concern to consult with respect to employing or selecting such an outside cargo surveyor. I asked him to get in touch with them immediately. I think he reported to me on the following day that he had consulted them that afternoon. That was the afternoon of the 21st. On the 22d, in the morning, he came into my office and showed me a copy of a letter he had written Balfour-Guthrie & Company confirming that verbal request. I immediately phoned to Mr. Taylor's office, and he was out again and I left word. He came in sometime later during that day, I cannot recall just when.

Q. Who did?

A. Mr. Taylor. I cannot recall just exactly the hour, but some time later that same day he came in in response to the call I had left in the morning. I told Mr. Taylor the arrangement we had made with Balfour-Guthrie & Company to have an outside cargo surveyor make the inspection, and that the surveyor selected was Lloyd's agent at Seattle. I told him that Lloyd's agent had [315] either gone over that morning or was going that day, anyway, to Tacoma, and that if he wanted to be on hand himself or to have a representative on hand

(Testimony of A. H. Barkley.)

when Lloyd's agent made the inspection, we would be glad to have him do so.

Q. What did Mr. Taylor say then?

A. He made no objection to the selection. About the only thing I recall that he said was that he did not know that Lloyd's had an agent or a representative here in Seattle, and he wondered who he was. I told him I did not know his name. At that time his name was not told to me. Mr. Williams had merely said that Balfour-Guthrie & Company had told him that it was Lloyd's agent.

Q. Did that end the conversation you had with Mr. Taylor that day?

A. Yes, his stay was rather short.

Q. Then after that what did you do with relation to your talk with Mr. Taylor?

A. The following day—either the following day, that is, the 23d or the 24th, I am not sure which—Mr. Wilkinson came over from Tacoma to my office to talk the matter over. He had been consulted by Mr. Alleman previously; and Mr. Wilkinson told me that Mr. Ayton, Lloyd's agent, or Lloyd's representative, had examined the cargo and said that he considered it an unsafe and a risky proposition to handle; that he had not yet made his written report, but that was his verbal report made in Tacoma.

Mr. Wilkinson also told me that he was decidedly of the opinion himself that it would be a mistake to undertake to handle the cargo; that there was altogether too much risk involved, in his opinion; that he had had more or less experience with dam-

(Testimony of A. H. Barkley.)

aged cargoes and freight of various kinds. He and I then went into Mr. F. M. Dudley's office.

Q. Who is Mr. F. M. Dudley?

A. He is the General Attorney for the railroad.
[316]

Q. He was at that time?

A. Yes; and we told him that—I told Mr. Dudley of my negotiations with Mr. Taylor, and Mr. Wilkinson reported Mr. Ayton's conclusion as to the fact that it would be unsafe to handle the cargo.

I also told Mr. Dudley that the suggestion as to a contract to cover this special service and the absolute liability release was mine, and I asked him if that was all right if the thing had gone through. He said no, that such a contract would have been illegal.

We then and there concluded that it would be a mistake to go any further with the arrangements or undertake to handle the cargo.

I immediately went back to my office and phoned Mr. Taylor. I think he answered the phone himself, if I am not mistaken. I told him we had definitely decided not to undertake to handle it. He called at my office later, the same day or the following day; I rather think it was the same day, and expressed considerable disappointment at our final conclusion, and wanted to know if that was the last word, and I told him so far as I was concerned it was.

He asked me if we had received the report from Lloyd's agent. I told him we had not. He wanted

(Testimony of A. H. Barkley.)

to be furnished with a copy of the report when we did get it, and I told him I would be glad to see that he got it.

Q. Did you at any time then give him a copy of that report?

A. I had not received as yet.

Q. But later?

A. Within a couple of days I got the written report and as soon as I got it I made a couple of copies and I either mailed Mr. Taylor the original or a copy, I cannot recollect which.

Q. Have you a copy of Mr. Ayton's report, as given to you by him? A. Yes, sir. [317]

Q. Will you produce it?

A. It was not given to me by Mr. Ayton; it was delivered to Mr. Williams' office, and Mr. Williams, I believe, made the delivery to me.

Mr. KORTE.—I offer that for identification as Defendant's Exhibit No. 21.

Do you object to the signature, Mr. Lyeth?

Mr. LYETH.—No, but I object to it as not the best evidence.

Mr. KORTE.—The defendant offers this in evidence as Defendant's Identification No. 21, being the written report from J. Ayton, a cargo surveyor, Lloyd's Agent, to Balfour-Guthrie & Company and transmitted to us, and the one testified to by Mr. Barkley.

Mr. LYETH.—Your Honor, I object to that as purely hearsay. The report of Lloyd's surveyor is not proper evidence.

(Testimony of A. H. Barkley.)

The COURT.—It will explain the conduct of the company and that is all.

Mr. KORTE.—That is the purpose of it.

The COURT.—And Mr. Barkley testified that the selection was made with the consent of Mr. Taylor. It will be admitted, subject to the objection.

(The report of J. Ayton, received in evidence and marked “Defendant’s Exhibit No. 21.” Said exhibit is transmitted to the Circuit Court of Appeals with all of the other original exhibits in the case.)

Q. Now, did Mr. Taylor, at the time when you told him of Mr. Ayton’s report, and that you would send him a copy, or at any time previous to that, make any objection to Mr. Ayton’s competency or anything on that line, or any objections to him personally?

A. I informed him on the 22d of the selection. As I say, his only comment was, that he did not know that Lloyd’s had an agent or representative here and he wondered who he was. He did not seem to be particularly pleased with our selection, although he offered no objection.

Q. Did he at any time tell you or say to you that he wanted someone else to make that examination?

A. No, sir, he never suggested anybody. His offer was that he was [318] entirely willing to leave it to us to select some disinterested cargo surveyor to make the examination.

Q. Mr. Taylor testified here that on the 21st he had called on you and you told him that the rail-

(Testimony of A. H. Barkley.)

road had decided to forward this silk waste, and that this was on the 22d. Is that so or not—on the 21st or 22d did you at any time tell him that you had agreed to forward the freight unconditionally?

A. Never at any time. There was not at any time any discussion of forwarding the freight unconditionally. It was always under special conditions.

Q. —that you have outlined?

A. Under the special conditions which I have outlined, and most of them were his own suggestions.

Q. And those are the conditions which you outlined here to the Court?

A. Exactly. He never withdrew any of those conditions or suggested any changes, or objected to any of them at any time?

Cross-examination by Mr. LYETH.

Q. (Mr. LYETH.) Where was Mr. Earling?

A. He was out on the railroad.

Q. Where?

A. I do not recall where. He was en route going East.

Q. Did you send him a telegram about this, or write to him? A. I wired him.

Q. Have you that telegram? A. No, sir.

Mr. LYETH.—I called for the production of that.

Mr. KORTE.—Yes; I will get it if we can find it, I will have a search made for it. This is an old telegram of 1918.

Mr. LYETH.—You knew about this suit at the time, a long time ago.

(Testimony of A. H. Barkley.)

Q. Did you receive a telegram back from him?

A. Yes, sir. [319]

Q. Have you got that? A. No, sir.

Q. Where is it? A. I cannot recall now.

Q. Did you keep a file in your office under this matter?

A. I did not; that was about my only connection with it and I did not keep any file.

Q. You have not attempted to look for it?

A. I think I made a search. I either could not find it, or I found it and turned it over to the representative of the claim department. I do not recall which now; that was a couple of years ago.

Q. You do not recall whether you looked for it or not? A. I think I did.

Q. You think you did look for it and turned it over to the claim department? A. I think so.

Q. Did you turn it over to Mr. Mortensen?

A. I think so now. It would be Mr. Mortensen.

Q. He had charge of the case.

A. He has had more to do about it than anybody else in the claim department.

Q. How long did it take to get an answer back from Mr. Earling?

A. I think about two days before we got a reply.

Mr. SHORTS.—How long?

A. About two days.

Q. (Mr. LYETH.) And you do not know where he was?

A. I do not recall where he was now.

Q. Then you got back word from Mr. Earling

(Testimony of A. H. Barkley.)

that there would be no objection to the forwarding of this cargo, didn't you?

A. On the conditions discussed in my talk with Mr. Taylor.

Q. Which you outlined to Mr. Earling in the telegram? [320] A. Yes.

Q. And then you communicated that to Mr. Taylor, didn't you? A. Yes, sir.

Q. You told him there would be no objection to forwarding it under the conditions?

A. If all the conditions outlined were satisfactorily made and if we got the liability release and everything that was agreed to.

Q. Well, he told you, didn't he, the he was perfectly willing to release the railroad of all responsibility of future deterioration?

A. That was one agreement.

Q. And he told you he would be willing to send a man along to ice it, if necessary? A. Yes.

Q. If you wanted it? A. Yes.

Q. And you told him that Mr. Earling had no objection to the cargo going forward under those conditions, didn't you?

A. We have not mentioned all of the conditions we discussed, or what he did, rather.

Q. What further was there for him to do?

A. I told you what he was willing to do, and one of the things was that he would be willing to leave to us to arrange for the outside cargo inspector to examine the cargo and he would abide by our refusal in case he held it was unsafe and risky.

(Testimony of A. H. Barkley.)

Q. You did not say anything about that to him on the 21st?

A. Yes, sir; we discussed all of the conditions.

Q. You did not discuss with him on the 21st about the cargo surveyor?

A. Yes, sir. I told him he would have to meet that condition also.

Q. He did not have anything to do about it, did he?

A. I was merely reminding him that that was one of his original offers. [321]

Q. Did you tell him who the cargo surveyor was then? A. I did not.

Q. Did you tell him what you were going to do about it?

A. I did not. I simply told him that we would have an examination made. I had not made any arrangements yet. I had only got word from Mr. Earling that day. I told him on the following morning.

Q. As soon as you got the telegram from Mr. Earling, you telephoned Mr. Taylor and he came over to your office?

A. He was not in the office then; he came sometime during the day.

Q. And did you show him Mr. Earling's telegram? A. No, sir.

Q. Did you tell him that Mr. Earling had no objection to forwarding it?

A. I told him the substance of Mr. Earling's response.

(Testimony of A. H. Barkley.)

Q. Well, then, you did tell him that the cargo would go forward under the conditions which he had outlined, didn't you?

A. If all the conditions we had agreed to were met that would be the case.

Q. I didn't ask you that. I asked you, you did tell him that the cargo would go forward under the conditions outlined? A. I answered that.

Q. Just answer my question.

Mr. KORTE.—I think he answered it.

The COURT.—I think I understand what his answer is, but if counsel does not, he may answer it again, if it is not clear to counsel.

Q. You did tell Mr. Taylor that Mr. Earling had no objection, and that the cargo would go forward under the conditions which you had discussed, did you or did you not?

A. I told Mr. Taylor—

Q. Just answer that question yes or no.

A. Please repeat it. [322]

Q. (Question repeated to the witness as follows:)

“You did tell Mr. Taylor that Mr. Earling had no objection, and that the cargo would go forward under the conditions which you had discussed, did you or did you not?”

A. I told him that Mr. Earling had—

Q. Will you answer that question yes or no?

A. Yes.

Q. Then you telephoned Mr. Williams?

A. I didn't telephone him. I tried to see him. His office is close by, and I did not get hold of him

(Testimony of A. H. Barkley.)

until later in the afternoon.

Q. When was that?

A. The same day that I talked with Mr. Taylor.

Q. Mr. Williams showed you a letter, did he?

A. Not then.

Q. The next day he showed you a letter?

A. Yes.

Q. Where is that letter?

A. I have a copy of it?

Q. Then on the next day, that is, the 22d; is that right?

A. What do you mean by the next day?

Q. I mean the next day following your conversation with Mr. Taylor—you telephoned Mr. Taylor?

A. Yes.

Q. Again? A. Yes.

Q. And he came again to your office?

A. He did, sometime during the day; not immediately—he was not in the office.

Q. Some time during the 22d he came to your office? A. Yes. [323]

Q. Did you show him a copy of this letter to Balfour-Guthrie & Company that Mr. Williams had given you?

A. No, I don't think I did.

Q. And Mr. Taylor told you that he did not know that Lloyd's had an agent, or that Lloyd's agent had a surveyor here? A. That's it.

Q. And did he tell you that he did not know that Lloyd's agent had an office here?

A. As I recall, his comment was—it was the first

(Testimony of A. H. Barkley.)

comment he made—he did not know that Lloyd's had an agent or a representative here.

Q. He did not know that Lloyd's had an agent or representative here? A. Yes.

Q. Did you know who Mr. Taylor was?

A. He told me he represented the underwriters who had this on their hands.

Q. You had never known him before?

A. I had not.

Q. And he told you that he did not know that Lloyd's had an agent in Seattle? A. Yes.

Q. And was it at that time that you told him or made the suggestion that it would be wise for him if he wanted to have an agent or representative present at the time of the inspection— A. I did.

Q. That as on the 22d?

A. That as the 22d. I told him—

Q. Well, what did you say to him?

A. I told him if he wanted to be on hand himself or have a representative [324] there we would be perfectly agreeable and would be glad to have him do so.

Q. And you told him the day when the survey would take place?

A. I told him that Lloyd's agent had either gone over that morning or would be going over during the day.

Q. That was on the 22d? A. Yes, sir.

Q. You told him that Lloyd's agent was going over that day or the next day? Where did you get that information?

(Testimony of A. H. Barkley.)

A. I didn't say that day or the next day. I told him he had gone over that morning or was going over during the day.

Q. Had gone that morning or was going during the day? A. Yes, sir.

Q. Where did you get that information?

A. Mr. Williams gave me that.

Q. Mr. Williams gave you that? A. Yes, sir.

Q. The day before?

A. No, sir; he gave me that that morning of the 22d.

Q. When he showed you the letter he had written?

A. Yes.

Q. And the only comment Mr. Taylor made was that he did not know that Lloyd's agent had a surveyor here? A. That was all.

Q. He made no objections? A. He did not.

Q. Did you tell him at that time who this surveyor was?

A. I did not. I did not know myself. I did not have the man's name.

Q. When you heard about this survey, who told you about it?

A. I heard about it the following day, either the 23d or the 24th; I think it was the 23d. [325]

Q. Who told you about it?

A. Mr. Wilkinson.

Q. Oh, Mr. Wilkinson told you?

A. Yes, he came over from Tacoma.

Q. You had this conversation with Mr. Wilkinson, when he told you the result of the survey, and

(Testimony of A. H. Barkley.)

the conversation with Mr. Dudley, the general counsel or the attorney for the road, on the same day?

A. Yes, sir.

Q. And then you telephoned Mr. Taylor the same day? A. Yes.

Q. Did Mr. Taylor come to your office the same day?

A. I think he did; I think he came the same day or the following day.

Q. And so you cleaned it up in one day?

A. Yes; the day that Mr. Wilkinson came over, we went into Mr. Dudley's office and then I phoned to Mr. Taylor.

Q. Then what did Mr. Taylor say to you when he came over to your office?

A. After informing him of our final refusal?

Q. Yes.

A. He was decidedly disappointed and asked for a copy of the report.

Q. He asked for a copy of the surveyor's report?

A. Yes.

Q. Did you tell him who the surveyor was?

A. I forget whether I knew his name at that time or not. I do not recall.

Q. Mr. Wilkinson did not tell you his name?

A. He probably did. I am not sure. I was not very much interested in the name.

Q. He did not discuss with you at all who the surveyor was, or [326] whether he was competent, or whether he knew anything about silk

(Testimony of A. H. Barkley.)

or anything like that at that time?

A. He did not.

Q. He just said, "Mail me a copy of the report"?

A. He did not say, "Mail me a copy of the report." He asked to be given a copy of the report as soon as we had it.

Q. And he did not ask you who it was that had made the report?

A. I do not recall whether he did or not. He had had ample opportunity to find out, if he wanted to.

Q. You say he had ample opportunity?

A. He surely had. I told him we made the arrangement through Balfour-Guthrie & Company, and it was an easy matter for him to find out.

Q. You told him only that you had made arrangements with Balfour-Guthrie, and that was when?

A. When did I tell him that?

Q. Yes, when did you tell him that?

A. I told him that on the 22d.

Q. Did you tell him then that Balfour-Guthrie & Company were Lloyd's agents?

A. I did not. I simply said that we had made the arrangements through Balfour-Guthrie & Company. That we went to them—primarily I asked Mr. Williams if Balfour-Guthrie & Company would not be good people to consult with reference to the selection of such a surveyor, and he went to Balfour-Guthrie & Company and made arrangements

(Testimony of A. H. Barkley.)

through them for the Lloyd's agents to make the inspection.

Q. Then you told him—you say you told him that you made the arrangements with Balfour-Guthrie & Company, and not that Lloyd's agent would make the survey?

A. Lloyd's agent was to make the survey. The arrangement was made by Mr. Williams through Balfour-Guthrie & Company. [327]

Q. You told him that? A. I did.

Q. Did you tell him that you had made the arrangements through Mr. Williams?

A. I do not recall that detail. I probably did.

Q. And that was the time he said he did not know that Lloyds had an agent here? A. Yes.

Q. At no time then did Mr. Taylor know who this agent was, or who the surveyor was, prior to this last talk you had with him, or during that last talk?

A. What do you mean by the last talk?

Q. The time you definitely refused to forward it?

A. That is not what I said. I said I notified him on the 22d of the selection of Lloyd's agent to make the survey, and he knew on the 22d that we had made the arrangement through Balfour-Guthrie & Company to have Lloyd's agent make the survey.

Q. Don't you know that Balfour-Guthrie & Company are Lloyd's agents themselves?

Q. You do not know it now?

(Testimony of A. H. Barkley.)

A. I do not know that I do know it now.

Q. And Mr. Taylor did not question or ask you whether this surveyor that looked at the cargo knew anything about waste silk at all? A. No, sir.

Q. He did not ask you anything about that at all?

A. No, sir.

Q. Going back to the first conversation which you had with Mr. Taylor; did he suggest this surveyor, or did you? A. He did.

Q. He did? A. Yes. [328]

Q. Well, did he speak about a man who was competent to judge silk and who was experienced with silk?

A. No. He did not say competent to judge silk. He said, "A competent cargo surveyor."

Q. And that is all he said? A. Yes.

Q. And he did not say anything about a man who knew about silk?

A. No; we were talking about cargo surveyors.

Testimony of James L. Brown, for Defendant.

And, to further prove the issue on his part, the defendant called as a witness JAMES L. BROWN, who gave testimony as follows:

Q. (By Mr. KORTE.) State your full name.

A. James L. Brown.

Q. What position do you hold with the Railroad Company?

A. Assistant Superintendent of Transportation.